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File No 0 Def. of India /42

Legal DEPARTMENT

A BRANCH

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Subject:—

Opinions under the Defence of India Act, 1939

Part I

{ Please see part II for subsequent papers }

P 153/C

File No. 0 Def. of India /42 part I

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12-A

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M.R.D.
2-5-56

Statement of the Case.

The question for consideration is whether the expression "land" in rule 127 of the Defence of India Rules includes buildings.

2. The expression "land" has not been defined in the Defence of India Act or the Defence of India Rules. It is true that "land" in its general sense includes buildings. (Cf. Wharton's Law Lexicon). But in the Defence of India Rules there are several provisions referring separately to lands and buildings. On a strict construction of rule 127 of the Defence of India Rules- especially having regard to the context in which the words "enter on" and "pass over" have been used it would appear that the rule was intended to apply to land only and not to buildings or premises. (Cf. rule 51(2) which provides for entry on any premises in the event of hostile attack and rule 81(2)(f) which provides for making an order regarding the entry into and inspection of premises and rule 5 which refers to land and building.). The point is however not entirely free from doubt and since it is one of great importance the Advocate General is requested to give his opinion.

Sd/-

Remembrancer of Legal Affairs.

U.R. to the Adv.General, No.11153 dated 2nd January 1942.

M.R.D.
26/4/56

I agree with the view taken by the R.L.A.

2. Ordinarily and apart from inferences to be drawn from the context. the word "land" would include "buildings". In these rules however the the word "land" does not seem to have been used in a comprehensive sense so as to include "buildings". Rule 5 speaks of "land" and "Building" separately. Various other rules use the expression "premises" or "property", the intention in those cases being to include "land" as well as "buildings". See rules 10,11,50 and 51(2).

3. The wording of rule 127 also indicates that the word "land" in the rule does not include a "building". The words "enter on" in sub clause(a) and "pass over" in sub clause(c) of the rule are appropriate only to "land" as distinguished from "buildings".

Sd/-
Advocate General .
5-1-42.

M.R.D.
26/4/56

Office of the R.L.A.

The Advocate General was consulted in this case. A copy of his opinion dated the 5th January 1942, along with a copy of the Statement of the Case, is forwarded herewith.

Sd/-
5/1

Remembrancer of Legal Affairs.

Sd/-
5/1/42

U.R. to H.D.(Spl.), A.R.P., No. 2 Confs., dated 5th January 1942.

M.R.D.
26/4/56

Office of the R.L.A.

The order of disposal of the gun and the cartridges appears to have been made by the City Magistrate under section517 of the Criminal Procedure Code. 1898. It is true that that section gives a discretionary power tothe Magistrate to dispose of property regarding which an offence has been committed after the conclusion of a trial Sub-rule(2)of rule 124 of the Defence of India Rules however requires a Magistrate before whom anything seized under sub-rule (1)is conveyed, to report the fact of such seizure to the Provincial Government and pending the recipt of its orders to detain or keep the property in safe custody; Under sub-rule (3) such property shall be disposed of in such manner as the Provincial Government may direct. These special provisions in the Defence of India Rules prevail over the general provision in section 517 of the Code. The Magistrate was aware that in the present case the gun and the cartridges were seized under sub-rule (1) of rule 124. He should therefore have reported the seizure to the Provincial Government under sub-rule (2) instead of ordering the return of the articles to the owner. The order of disposal passed by the Magistrate in this case does not therefore appear to be strictly correct. The property can only be disposed of insuch manner as the Provincial ~~property can only be disposed of~~ Government directs. Since however the order of disposal passed by the

by the Magistrate is such as Government itself would ordinarly have passed in the present case, the point is not, as observed by the Secretary, H.D., of much consequence and the order may be allowed to stand.

Sd/-
17/2

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.), No.75-confl, dated 17th February 1942. M.RD 25/4/6

Office of R.L.A.

The question for the consideration of the Remembrancer of Legal Affairs is whether the King George V Infirmary can be used as an emergency hospital in the event of air raids without the premises being requisitioned under the Defence of India Rules.

2. It appears clear from Clause V of the Scheme of the King Geroge Memorial framed under the provisions of sub-section(1)of section 5 of the Charitable Endowments Act, 1890 and the history of the institution detailed in the Foreward to the King Geroge V Memorial Rules that the Infirmary should be used for incurables from the Home i.e. "The Lady Dhunbai Jehangir Home for the Destitute" which is a part of the institution, and in releif of the congestion in the hospitalsof of the City of Bombay and that the donations collected for the prupose should be utilised for maintaining the Infirmary. The expression "congestion" in this connection is used with reference to destitute patients. When the donor's directionscan be exactly obeyed the Court will not allow any departure from them on the grounds of expediency. The Court cannot very or modify existing trusts so as to meet itts own views with regard to what it may think beneficial and for the general advantage of the public,but the Court will see that the trusts are proerly administered the and the directions and intentions of th

of ~~the donors~~ are fully carried into effect (see Tudor on Charities,PP.146-147).Section 5(5) of the Charitable Endowments Act, 1890,provides that in the settlement of the scheme effect shall be given to the wishes of the author of the trust sofar as they can be asscertained and in the opinion of Government effect can reasonably be given. In the present case the object of the trust has not failed and there is no question of applying the funds cy-pres.

The use of the Infirmary as an emergency hospital for treatment of air raid casualty cases would be a departure from the intentions of the donors and a diversion of the trust. Consequently it would not be legally feasible to modify the scheme for the purpose under section 5(2) of the Charitable Endowments Act. The only course open would therefore be to take action under-sub-rule(1)of rule 76 of the Defence of India Rules.

Sd/-
23/2

Remembrancer of Legal Affairs.

U.R. to H.D.,(Special)-A.R.P., No.81-Confl,dated 24th February 1942.

M.R.D
26/4/6

Office of the R.I.A.

It is proposed that the A.R.P. Controllers in Bombay and elsewhere should, during a period of hostile attack and for such period thereafter as is necessary for the immediate clearing up of ~~the general~~ incidents, have the power to issue directions to the members of the general publica and to exercise operational control over the working of all public utility services as for example Municipalities, Telephone Companies, Electrical power Companies and Gas Companies in order that such services may be adapted and concentrated towards the meeting of any emergency The proposal is somewhat vague; but the intention appears to be to empower the A.R.P. Controller to exercise operational control over the public generally and over the working of specific public utilityconcerns during a period of apprehended or actual hostile attack and to such period thereaftere as may be necessary for restoring order and bringing the situation back to nromal. In this connection it would be possible to rule 51(1) of the Defence of India Rules for the purpose of taking preliminary precautionary measures to protect the general public or any members there of against the dangers involved in an apprehended attack or with a view to acquainting the general public or any members thereof with the action to be taken in such emergency. This rule is not wide enough to exercise operational control over the

~~control over the~~ working of public utilityservices during the periodof actual attack or thereafter and resort must conse-quent-ly be had to rule 81(3)for the purpose. This rule empowers Government for the purpose of the efficent prosecution of the the war or for maintainig supplies and services essential to the life of the ~~the~~ community to ~~make~~ make an order authorising any person(the authorised Controller) to exercise with respect to any undertaking or any part thereof such functions of control as may be provided by the order. Under clause(b)of this rule the undertaking or part shall be carried on in accordance with any directions given by the authorised Controller and any person having any functions of management ~~in~~ relation to the undertaking or part shall comply with such directions. Clause (a)of this rule , however provides that inexercising operational control the authorised controller shall not have power to give any directions inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in inso far as may be specifically provided by the order. The expression "undertaking" means any undertaking by way of any trade or business. Electric and Gas Companies would be undertakings within the meaning of rule 81(3)and it would be possible for the A.R.P. controller to exercise operational control in respect of these Companies underthis rule. Municipal services however do not come within the definition of the term "undertaking" and therefore rule 81(3) will have noapplication in their case. Control over these services can be more appropriately taken under rule 51F(3) which empowers Government to make an order requiring a Municipality to take such measures which are necessary for the protection of persons and proverty under thecontrol ~~or within the juri-~~

within the jurisdiction of the Municipality from injury or damage, or for ensuring the due maintenance of the vital services of the authority in the event of hostile attack. As regards Telephone Companies resort could be had both to rules 17 and 81(3) in consultation with the Director-General. Posts and Telegraphs, for the purpose of exercising operational control over them during the period of emergency.

Sd/-
27/2

Remembrancer of Legal Affairs.

U.R. to R.D.(Spl.), No.69-Confl., dated the 27th February 1942.

M.R.D.
26/4/56

Office of the R.L.A.

The question for the Remembrancer of Legal Affairs' consideration is whether a railway authority from whose possession any articles or things belonging to thrid parties are requisitioned by Government under rule 83(1) of the Defence of India Rules is entitiled to an indemnity bound from Government indemnifying it against any possible claim for demages by such third parties.

2. The anwer to the question is in the negative. The power conferred on Government to requisition any articles or things under rule 83(1) of the Defence of India Rules is a statutory power exercisable by it under the circumstances and in in the manner speficied in the rule. The rule provides inter alia that if in the opinion of the Provincial Government it is necessary or expedient so to do for maintaining supplies and service essential to the life of the community that Government may by order in writing requisition any article or thing. Under rule 2(11) of the Rules"requisition" means in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority. Under rule 83(1) therefore Government can by making an order under it take possession of any property or require any any person in possession of the property to place it at its disposal. Under this rule Government ca

can requistion the property from any person who is in possession of it although he may not be the owner of it and such person is bound in law to comply with the order. The railway authority in possession of the articles is therefore bound to obey the requisitioning order that may be passed by Government There is nothing in the rulewhich requires Government to indemnify sushx railway authority against any possible claim for damages by the third parties. The railway authority cannot, therefore, claim any indemnity bond from Government.

Sd/-
7/3

Remembrancer ofLegal Affairs.

U.R. to G.D.,No.2078 dated the 9th March 1942.

M.R.D.
26/4/56

R.I.NO. 2948
24-3-42

Submitted.

The question for the consideration of the R.L.A. is whether the expression "Air Raid Shelter" in rule 51-I of the D.of I. Rules includes blast walls and trenches.

2. Sub-rule(1) of rule 51-I of the D. of I. Rules empowers the Central Govt. and provincial Govt. requires the owner of the premises to construct therein or thereon an air raid shelter. The word 'shelter' ordinarily means 'cover' or 'protection'.(Cf.Chambers Dictionary)Blast walls and trenches are intended to give protection against the effects of blast and splinters. The both would therefore be included within the expression air raid'shelter'. The view expressed by Jt. Secy.,H.D.,at P.7 ante appears to be correct.

Sd/-
24/3/42

I agree.

Sd/-
25/3

A.L.r. As in para 2 amended

Sd/-
25/3

R.L.A.
Sd/-
25/3

M.R.D.
26/4/56

U.R. toH.D., (Spl.) A.R.P.No.2699,dated 25-3-42.

ORDER.

General Department.

Bombay Castle, March 1942.

No.4769/33:— Whereas it appears to the Government of Bombay that it is necessary and expedient for the efficient prosecution of the war and for maintaining supplies essential to the life of the community to regulate the disposal of perishable consignments arriving into the City of Bombay by railway during the period of emergency.

Now, therefore, in exercise of the powers conferred by clauses(a)and(f) of sub-rule(2) of rule 81 of the Defence of India Rules, the Government of Bombay is pleased to order that perishable consignments arriving by railway into the City of Bombay during the period of emergency, if not claimed or taken deliver of within a period * hours from the time of their arrival may be delivered on demand by the Railway Administration concenrned to such officer or officers as may be appointed in this behalf by Government for disposal in such manner as may be directed by Government for by general or special order in this behalf, and insuch cases the persons entitled thereto shall be paid such compensation and the Railway Administration concerned shall receive such amount for freight and other charges due to it as Government may determine.

Explanation:- For the purposes of this Order the Government of Bombay may at any time declare,

any time declare, by notification in the Official Gazette, that an emergency limits and the period of emergency shall be deemed to last from the date of such notification upto the date of a subsequent notification by the Government of Bombay in the Official Gazette cancelling such notification.

By order of the Governor of Bombay

Secretary to Government. M.R.D
25/4/56

112-Confl-
23-3-42

Submitted with reference to G.D. note dated 20th March 1942 at P.39 ante.

2. These papers relate to the proposal to issue an order under rule 81(2)(a)and (f) of the Defence of India Rules on the lines of the Bengal draft at P.14 ante providing for disposal of perishable consignments arriving by railway into the City of Bombay during the period of emergency. The draft order at P.41 ante is shown to the R.L.A. for scrutiny. The R.L.A. is also requested to advise whether it is necessaryto define the word "emergency" used in the draft order, whether there is any legal objection to the provisions contained in the draft order for payment of compensation to the onwers of the consignments and for payment of freight to the Railway authority, whether the appointment of the of the officers formdisposal of the consignments can be made by executive orders and whether the proposed order will make a apparate order of acquistion uncessary.

3. Subject to the following remarks a revised draft order is put up for approval.

4. The expression "the period of emergency" used in the draft order is vague. A definition on the lines suggested in para. 3 of G.D.office note at P.39 ante would not be suitable. If it is decided by G.B. to define the expression an Ex/

~~expression an~~ Explanation on the lines suggested in the revised draft may be inserted in the order.

5. As it is proposed to give compensation to the owners of the consignments it is desirable to speficy in the proposed order for the information of the public the officer or officers disposing of the consignments.

6. There is no legal objection to the provisions contained in the pYoposed order for payment of compensation to the owners of consignments and freight charges to the Railway administration.

7. The provision contained in the draft order that the Railway authority may without waiting for consigners to turn up deliver immediately to the officer appointed by Govt. the consignments arriving at the Railway station is not in order. This would amount to requisitioning the consignments under rule 83(1). The said provision has therefore been suitably revised and no separate order of acquisition under rule 83(2)appears necessary.

8. The G.D.may be requested to verify whether the revised draft order is suitable to achieve the object in view.

Sd/-
23/3

J.S. The questions raised in this case require same consideration rule containig the relevant opinion is put up in another V. urgant case. This case maybe detand till tomarrow.

Sd/-
24/3

S.A.S. Sd/-
24/3

The G.D.draft order at P.41 ante which it is proposed to issue under clauses.

M.R.D
27/4/6

Office of the R.L.A.

The draft order at P.41 ante sent by G.D. for R.L.A.'s secutiny provides that perishable consignments arriving by railway into the City o Bombay may on demand be delivered immediately by the Railway administration without waiting for the consignees to turn up, to the officer appoin appointed by the Provincial Government for dispo posal in such manner as may be directed by Gover Government by a general or special order. It further provides that the persons entitled to the consignments shall be compensated forth- goods taken over and the Railway concerned shall be paid the freight on accountof the consignment. It is proposed to issue the order under clauses (a)and(f)of sub-rule(2)of rule 81 of the Defence of India Rules.

2. It does not appear that it will be possible to issue the proposed draft order under clauses (a)and(f)or any other clause of rule 81(2). Clause(a)of sub_rule (2)or rule 81 gives power to the Government to make an order providing inter alia, for regulating or prohibiting the the move- ment, transport, distribution or disposal of articles or things of any description whatsoever. The proposed order goes beyond the scope of clause(a) and provides for the immediate delivery or perishablearticles arriving by railway to the officers appointed by Government and for compensa- ting the owners of the articles so handed over.

In effect the order amounts to the requisitioning and acquiring of perishable articles. In pith and substance it is an order under rule 83 of the Defence of India Rules and cannot as such be made under clause(a)of rule 81(2). Clause(f)empowers government to make orders only for incidental and supplementary matters for the purposes of an order under any other clause. As the order in this case is not covered by any other clause of rule 81(2),it will not be legally possible to issue it as proposed. As the order is legally not competent the other points raised in regard to it in the G.D. office note at P.39ante have not been considered.

Sd/-
27/3

Remembrancer of Legal Affairs,

U.R. to G.D.No.130-Confl.dated the 27-3-42. M.R.D. 25/4/56

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether in an Air Raid tenants living in upper flats have a right of entry into the ground floor flats.

2. The anwer is in the negative. There is noting in the orders so far issued under the Defence of India Rules giving persons residing in uppear flats an independent right of entry int flats on the ground floor in the event of an air raid. Paragraph 3 of the City of Bombay Hostile Attacks(Precautions)x Orders made by the Commissioner of police no doubt provides that every ow owner or occupier of any building or premises shall ondemand by any police officer or any member of the A.R.P. Services admit into such building or premises any person seeking shelther during the period of a hostile attack or an A.R.P exercise as the case may be. This paragraph however applies only to personswho have no duties to perform in connection with the A.R.P. Services, and who are out in the open(See para 2(ii)of the said Orders). It has no application to residents who are already under cover i.e. in the safety or their flat or apartments. Such residents are precluded from bringing themselves within the compass of paragraph 2(ii)of the said Orders by leaving the shelter of their flats and coming out in the open. They would be governed by paragraph 2(i)of the said Orders which provides that every person who has no duties

~~who has no duties~~ to perform in connection with the A.R.P. Services, and who is within a building shall remain therein.

They would consequently have no right to claim entry into a ground floor flat merely because it affords better protection

Sd/-
13-4

Remembrancer of Legal Affairs,

U.R. to H.D.(Spl). A.R.P., No,3218 ,dated the 14th April 1942.

M.R.D
27/4/56

R.I.NO. 3439 dated-9-4-42.

Submitted.

2. It is proposed to requisition the godowns of Messrs. Karimji Jiwanji and Co. at Musafar-khana Road behind the Crawford Market under Rules 76 and 79 of the Defence of India Rules read with G.of I.Defence Co-rodinationDeptt. Notification No.824-O.R./41,dated 4-1041. The construction of these godowns is not completed as yet and it is apprehended that if the Order of requisition is issued, the owner will suspen pend further work. Ut us stated in the H.D. (Poll.) A.R.P. (2) note, that under rules 76and 79 the Collr. of Bombay is authorised to make such further order as may appear to him to be necessary or expedient in connection with the the requisitioning and the Collr. can therefore issue an order, after requisitioning, preventing the suspension of further work. The R.L.A. is requested to advise whether the above view is correct.

3. Under Rule 76(1)of the Defence of India Rules read with G.of I,Defence Co-ordinationDeptt. with No.824-O.R./41,dated 4,10,41,the Collr.of Bombay may by order in writing requisition any building, part of building, or other premises together with any fixtures. fittings, furniture or other things thereon, and may make such further order as appear to the Collr. to be necessary or expenditin

to be necessary or expedient in connection with the requisitioning. The question that arises for consideration therefore is whether an order preventing the suspension of further work of construction is an order which can be said to be "necessary and expedient in connexion with the requisitioning." The word 'requistion' is defined in Rule 2(11)of the Defence of India Rules to mean in relation to any property to taken possession of the property or to requirex the property to be placed at the disposal of the the requisitioning authority. Order preventing the suspension of further work would not it appears, be an order necessary or expedient in connection with the requisitioning i.e. taking into possession of the property or requiring the property to be placed at the disposal of the requisitioning authority. Under sub-clause(b)of sub-rule (2a)of Rule 76 the Collr. may by order direct that the owner or occupier of the building requistioned shall not without his permission, structurally alther such building or part of the building for the period specified in that order. Thereis no provision however for compelling by an order the owner or occupier of a building to complete the construction of the building To take an extreme case if the words' necessary and expedient in connection with requisity held to be wide. The owner of a Building which is under construction and of which only the ground floor is constructed when this building is requisitioned can be made to complete even Three floors of the building if that was his original plan when he started construction. If would be difficult to where to draw the line. At the most the owner can beasked to make certain minor alterations in the ~~existing structure to su~~

existing structurer to suit Govt. purpose but completing the construction of the work is a different matte altogether. It would therefore be advisable either to wait till the construction work of the godwon is completed or to take possession of the building as it is. Even after taking possession of the uncomplted buildin it seems Govt. can complete it in view of the provison in sub-rule(2) of rule 76 to the effect that Govt. may use or deal with the premises in such manner as may appear to it to be expedient.

M.R.D
17/4/86

Office of the R.L.A.

Rule 76 (1)of the Defence of India Rules read with the Government of India Defence Co-ordination Department Notificationm No.824-O.R. /41,dated the 4th October 1941 provides for power of the Collector to requistion by an order in wri writing any building, part of a building, or othe premises togethercwith any fixtures, fittings, fu furniture or other things therein and to make such further order as appear to him to be necessary or expedient in connectionwith the requisitioning. "Requistion" as defined in rule 2(11)means in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority. The words "further order as appear to be necessayyer or expedient in connection with the requisitioning", in rule 76(1)would evidently mean such ancillary order as would give effect to the order of requisition-ing. An order requring requiring the comple-tion of a nonstruction work would not be an ancillary order contemplated under rule 76(1). The view taken in the the H.D.(Poll.)A.R.P. (2) note at page 37 ante is not correct.

Sd/-
13/4
Remembrancer of Legal Affairs.

M.R.E.
27/4/56

Poll.)A.R.P.(2),No.3212,dated
14th April 1942.

Office of the R.L.A.

In his opinion No. 81/conrl. dated the 28th February 1942 the R.L.A. advised that it was necessary to take action under rule 75(1)of the Defence of India Rules if the premises of the king George V Memorial premises were to be used as an emergency hospital. The Collector of Bombay has accordingly issued an order under the rule requisitioning the said premises(PP.77and 83 ante. The R.L.A. is now requested to advise on the following two points raised in the Municipal Commissioner's D.O.letter dated 19th March 1942 at page 123 ante:

(1)Whether in view of the order issued by the Collector of Bombay, it is competent for the Managing Committeem to conduct the infirmary and the Home according to the terms or the scheme sanctioned by Government.

(2)Whether it would be competent for the Managing committee to incur expenditure for the maintenance of the beggars outside the City.(The Managing Committee has arranged to accommodate the beggars in an Institution of the Salvation Army at Kaira, and has resolved to spend on their transfer to and maintenance at Kaira.).

2. As regards the first question. the order issued by the Collector of Bombay under rule 76 of the Defence of India Rules directs that the owner or any person claiming any interest in the premises shall not enter or use them for any pur-

~~for any purpose during the period they remain in the possession of the Government of Bombay Obviously, there, it is not competent for the~~

for any prupose during the period they remain in the possession of the Government of Bombay. Obviously, therefore it is not competent for the Managing Committee to conduct the institution according to the terms of the Scheme(at P. 87 ante) sanctioned under the Charitable Endowments Act, 1890.

3. The next point is whether the managing Committee can incur expenditure on transferring the beggars to the Salvation Army's Home at Kaira and maintaining them there. The Primary object of the trust is to provide relief to the incurables and the helpless destitute beggars from Bombay(see clause 5 of the scheme). Under Clause VII of the scheme however the income accruing to the Trust is to be applied by the Managing Committee exclusively for the purposes of the King George V Memorial. As stated in paragraph 2 above the Managing Committee is not now competent to conduct the institution according tothe sanctioned scheme. The persons acting in the administration of the trust can however apply under sub-section (2)of section 5 of the charitable Endowments Act 1890, for the modification of the scheme. That sub-section empowers the Provincial Government to modity any scheme settled under sub-section(1)or to substitute another scheme in its stead. The maintenance of beggars outside the city would not be foreign to the object of the trust. The managing Committee of the Institution may therefore apply to the provincial Government for modification of the scheme.

Sd/-
15/4

Remembrancer of Legal Affairs.

U.S. to the H.D. (special) A.R.P. (1),No.167-Confl dated the 16th April 1942.

Office of the A.L.A

The questionfor consideration is whether an order under sub-rule(1)of rule 26 of the Defence of India Rules can be made requiring any person directed to reside in a specified place to proceed there under police Surveillances. Under clauses (b)and (d) of that sub-rule, an order can be made requiring a person to be detained or as the case may be,requiring him to reside in a specified place or area and if he is not already there to proceed to such place or area within a specified time. Under clause (h) of the sub-rule,the order can 'otherwise regulate his conduct in any specifed particular'. An order for police surveillance en route concerns the conduct of the police.in relation to the perso in question rather than regulatesx the conduct of the person in proceeding to the place speficied. Unless the conduct of the person himself is clearly regulated, rule 26(1)(h) will not apply. This is clear also, from the subsequent provisions of rule 26; thus,sub-rule(3) provides that an order under sub-rule (1) may provide for execution of a bond for the the due performance of the order, and sub-rule(6)provides for punishment for breach of the order. Under sub-rule (4)it is only when a person fails to leave any place in accordance with an order under sub-rule(1) that he can be removed by a police officer. The answer to the question is therefore in the negative.

2. It is presumed that the statement made in the Home Department draft order at P.7ante that the man is to be released at his native place in the Ratnagiri District is not correct and that as stated in the Home Department draft order at P.6 ante he is to be detained in policy custody only until his departure from Bombay. Otherwise there would be no occassion for the question raised in Joint Secretary Home Department's note.

3. A revised draft order in place of the draft order at P.7 ante is sent herewith. In an order under rule 27(1)(d) of the Defence of India Rules it would be necessary to specify inter alia the time at which the person in respect of whom an order has been made under rule 26 is required to attend before any specified authority or person. The Home Department draft order which requires the man to attend before the police photographer at such time as may be convenient to the said police photographer is vague. It would be necessary to state the exact time at which the man should attend. If the intention is to keep the man under detention till the moment of his departure from Bombay, it would be for the police to take him to the C.I.D. Officer at the appointed hour for being photographed. It is therefore for the consideration of the Home Department if the draft order should contain a redundant provison directing the man to attend before the police photographer at the specified place and time.

Sd/-
15/4

Remembrancer of Legal Affairs.

U.R. to H.D.(Special),No 3266 ,dated the 15th April 1942. M.B 25/4

ORDER

Home Department.

Bombay Castle, 1942

No. S.D. In exercise of the powers conferred by sub-rule (1)of rule 27 of the Defence of India Rules, the Government of Bombay is hereby pleased to direct that the person known as Mukund alias Karpoor Dada in respect of whom Government Order in the Home Department No. Dated th April 1942 has been made under the provisions of rule 26 of the said Rules, shall---

(a)allow himself to be photographed by the the police photographer; and

(b) for this purpose attend before the police photographer at the C.I.D. Office, Bombay, on the * April 1942 at ~~A.M.~~ p.m.

*To be filled in by the H.D.before issue

*To be filled in by the H.D.before issue.

By order of the Governor of Bombay,

Joint Secretary to Government.

M.R.D.

26/4/42

Office of the R.L.A.

The Defence of India Rules are made under section 2 of the Defence of India Act, 1939,. Section 3 of that Act provides that any rule made under section 2 and any order made under any such rule, shall have effect notwithstandingx anything inconsistent therewith contained in any enactment otherthan this Act or in any instrument having effect by virtue of any enactment other thanthis Act. The question therefore whether the the Transfer of Property Act applies or not to any premises to which the draft Order is made applicable is immaterial. The proposed order is to be issued under the.Defence of India Rules and would have effect notwithstanding anything inconsistent contained in any other enactment than the Defence of India Act, 1939.

Sd/-
29-4

Remembrancer of Legal Affairs.

U.R. to G.D.,No.3668,dated the 29th April 1942.

M.R.D.
28/4/56

Office of the R.L.A.

Sub-rule (1)of rule 51-I of the Defence of India Rules provides that if in respect of any premises the CentralGovernment or the Provincial Government considers it necessary or expendient so to do for the purpose of affording protection t to persons living or employed therin or thereon that Government may require the owner of the premises to construct thereinor thereon an air raid shelter within such period and in accordance with such requirements as to lay out materials and construction as may be speficied in the order. Sub-rule(2)provides for power of inspection of any premises to which an order under sub-rule (1) applies for the purpose of seeing whether an order has been complied with. Under sub-rule (3)if any person ordered under sub-rule(1)has failed to construct an air raid shelter or is not likely to compete it within the period specified in the order Government may cause the shelther to be constructed and recover the costs thereof from the owner as an arrange of landrevenue. Sublrule (4) provides for punishmet for contravention of any of the provisions of this rule. The word"any" may have one of several meanings,. according to the circumstances it may mean. "all","ech", "every""some","or" one or more out of several" (see Iyer's Law Lexicon,pages 72-73). If the words "ay premises" and "the owner of the premises" inrule 51-I are read intheir cotext, it would

it would appear that this rule, unlike rule 51-A, does not contemplate an order of a general nature but one affecting an individual person in respect of whose premises an air raid shelter is considered necessary for the purpose of affording protection to person living or employed therein or thereon (refer rule 119(1) providing for service of an order issued under the Defence of India Rules). Consequently, though the point is not quite free from doubt, it does not appear legally feasible to issue a general order under rule 51-I calling upon all owners of one and two room tenements to carry out structural precautions to provide air raid shelters.

Sd/-
4/5

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.)-A.R.P., No 3764, dated 5th May 1942.

M.R.D.
27/4/56

144 Confl.
13-4-1942.

Submitted with reference to paras 3 and 4 of G.D. note dated 7th April 1942 at page 77-79 ante.

2. The question for consideration of the R.L.A. is whether there is any legal objection to acquire the go goods formally under sub-rule(2) of rule 83 of the Defence of India Rules before they are sold to the publi so that the Requisitioning Authority could first deduct ~~app~~ expenses incurred before compensation is paid.

3. The intention of G.D. appears to be that during an emergency Govt. should obtain possession of certain perishable articles essential to the life of the comm ity from the shop keepers and their premises and sell them, if necessary, below the market price. After deducting expenses in connection with freight to be paid to the railway and for selling them to the publi Govt. should pay compensation to the owners of the articles only from the balance left out of the sale proceeds. Perhaps it is also intended that in some cases it will not be possible to keep proper accounts for all the sales made.

4. As pointed out in para 2 of Govt. of India, Defence coordination Deptt. letter dated 15th Jan. 1942 at P.58 ante Govt. has been given a free hand under sub-rule (3) of rule 83 to determine what compensation shall be paid in any case of requistion or acquisiton of article under that rule. ~~It will, therefore, be for Govt. to decide what principles should be followed in~~

It will, therefore, be for Govt. to decide what principles should be followed in giving compensation under sub-rule (3) of rule 83. There is, therefore no legal objection to deducting all expenses incurred before compensation is paid to the owners under rule 83(3).

5. As regards the other question whther it is necessary formally toacquire goods before they are sold to the public it may be pointed out that from the nature of the articles in question and the words may use or deal with the animal etc. in such manner as may appear to be expedient" used in rule 83(2) read with rule 2(11) it appears that it would be competent for Govt. to sell the articles without formally acquiring them. The case of requisitioning and acquiring of buildings and premises under rule 76 or lands under rule 79 appears to be of a different nature. In some cases it may be found desirable to acquire the articles free from any mortgage etc. There is no necessity to make anychange in G.N., G.D.No3682/33(a) dated 1st March 1942 and the model from for requisitioning articles under rule 83(1) at 69ante.

Sd/-
16/4

S.A. The first question for R.L.A.'s consideration is whether in view of the position stated inthe Govt. of India's letter of 25-3-42at P.73ante it is necessary to make any changes in the Govt. Notification No.3682/33(a), dated 1-3-42, at PP.59-60 ante or in the skeletion order at P.69 ante. M.

Office of the R.L.A.

Paragraph 3 of the General Department note:- The ...nt amendment to clause(iii) of sub-rule(1)of rule 119 of the Defence of India Rule only affects the procedure as to servic of any order in writing made under the rules. No amendment is necessary in the notification at pages-59-60 and the skeletion order at page 69.

Paragraph 4 of the General Department note:- The General Department is of opinion that it is desirable toacquire the goods formally under rule 83(2)of the Defence of India Rules before they are sold to the public. Such a course, if follow-ed would be free from legal objection. It is howeveran administrative point for the General Department to consider whether acquistion of the stocks requisitioned should be undertaken all at once or in such stages as may be adequate in relation to the needs of food supply for any period of time. By acquiring in stage, Government will be able to reserve to itself the option if need be, of returning to the owner all the unacquired stocks at the end of emergency.

MRD. 29/4/42.

Sd/-
22/4

Remembrancer of Legal Affairs.

U.R.to G.D., No.172-Confl., dated the 22nd April 1942.

R.I.NO. 410/4-5-42.

Submitted.

2. The question for consideration is whether after requisitioning land and premises under rules 76 and 79 of the Defence of India Rules, the postion of the owner is that of a landlord or that of a lessee and whether the owner or Govt. is responsible for keeping the structire in good repair.

3. When anyland or premises are requisitioned under rule 76and 79 of the Defence of India Rules, the transaction is not of an outright purphase soas to vest the land and premises absolutely in Government. It is only when the land and premises are to be acquired under sub-rule(2)of rules 76 and 79 after requisitioning and the notice of such acquistion is served on the owner, that the land and premises vest absolutely in Government free from all incumbrances. Though therefore the land and premises do not vest absolutely in Government after requistion yet whether is the postion of Government that of a leasee. the land and premises after requistion still vest in the owner but the relation between the owner and the requisitioning authority is not exactly that of a landlord and tenant. All the incidents of tenancy do not apply to them. The requistioning authority viz. Government does not pay any rent to the owner but compensation under rule 96for any losethe owner mayhave subtained as a result of requisitioning. The owner cannot therefore, be compelled to carry out the repairs of the building which is requisitioned but Government can carry

can carry out the repairs of the building which is requisitioned and take that fact into consideration while determining the amount of compensation to be p id to the owner. Under sub-rule(I) of rules 76 and 79 Government has power to make such further order as appear to it to be necessary or expendient in connection with the requistioning. The question that would arise for consideration is whether Govt.can by an order ask the owner to repair the requistioned premises. In R.L.A.'s opeinion No.3212 dated the 14th April 1942 it was held that the words'further order as appear to be necessary or expedient in connection with the requistioning" would evidently mean such ancillary order would give effect to the order of requistioning. The order requiring owner to carry out repairs whenever deemed necessary would not be such an ancillary order. From the provison in rule 79(2a)(b) it would appear that Governmentcan direct that the owner shall not without the permission of Government dispose of or structurally alter suchbuilding or part of a building. This provison clearly shows that the right to dispose of the building or to structurally alter it, is with the owner even after the premises are requisitioned and provision as in rule 76(2a).

M.B
27/4

Office of the R.L.A.

"requistion" is defined in rule 2(11) as meaning in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority. The transaction o requistioning is not one by which the property vests absolutely in Government. It is only whenthe property is acquired under clause(2)of rule 75A that it vests absolutely. Whenthe property is merely requistioned the owner still remains the owner. On the other hand,the relation between the owner and the requisitioning authority is not that of landlord and tenant. For example, the requisitioning authority does not pay rent to the owner but compensation under rule 96 for anyloss the owner may have sustained as a result of requistioning. Nor can the owner eject the requistioning authority. The incidents of tenncy cannot be attached to either the owneror the requistioning authirity. Nor does it seem correct to say merely on the analogy of landlord and tenant that the owner must reapir the property. When the owner places the building at thedisposal of the requistioning authority his duty seems tobe completely performed. He cannot be compelled to carry out the repairs to the building after it is requistioned.

2. However under rule 96(1), the owner of a property requistioned is to be paid such compensation as may be fixed in accordance with the provinsion of that rule. Under sub-rule(2)indefault of agreement between Governme and the owner ofthe property ,the Central Government or

or the Provincial Government, shall by general or special order specify the authority or person to which or~~x~~ whom any claim for compensation under sub-rule(1)shall be submitted and the authority or person by which or whom any such claim shall be adjudged and awared. Sub-rule(3)provides that the Central or Provincial Goernment mayfurther by general or special order prescibe the condtions to which the authority or person responsible for adjuding or awarding claims for compensation shall have regard when determining the amount of compensation payable and may give such supplementary orders as to the assessment and payment of compensation as may appear to it to be necessary or expendient. It would be possible, therefore, for Government when prescribing such conditions to take into account the fact that the owner has, or has not, repaired the property after it has been requistioned. Probably, if the powers of Government in this respect are brought to the notice of the owners, many of them would be willing to undertake repairs during the period of requisitioning. If Government Proposes to take into account, when prescibing the condtions for adjudging claims for compensation, the fact that the landlord has not repaired the property, it seems desirable, to give the landlord an opportunity of effecting repairs himself.

Sd/-
5/5/

Remembrancer of Legal Affairs.

U.R.to H.D.(Spl.)-A.R.P., No.3893,dated the 9th May 1942.

M.R.
27/4/56

Office of the R.L.A.

The Nasik-Deolali Electric Supply Co.Ltd., has been asked by the Nasik City Municipality

(i)to put up new street lights at different parts of the Nasik City where the Co,'s street lighting mains exist which work would require new service wires, reflectors etc. for connecting each lamp and.

(ii)to make a new 1000 yds. extension of the Co,'s street lighting mains for serving 14 street lamps in a locality known as "Ganeshwadi".

This requisition is made under clause 2 of the agreement entered into between the Municipality and the Co.for a period of 5 years from 13th May 1941. The Central Government by a restriction order No.A-826(56) dated the 7th March 1942, issued under clauses (e)and(f)of sub-rule(2)of rule 81 of rule 81 of the Defence of India Rules, directed that the said Co.,except as provided in the said order, should not enter into any fresh contract or agreement for supply for of energyrequiring the the provisions of any service wires, cables, connections not already installed. The said order further directed that if a proposal for such contract or agreement involved a demand for energy exceeding 50 Kilowatts the permission of theCentral Power Control Borad would be necessary for entering into the contract and if it did not exceed 50Kilowatts, the permission of the Government of Bombay(Public Works Department) would be necessary. In view of this restriction order the Co.has approached Government (Public Works Department)in the matter. The public Works Department considerers that the requisition by the Nasik City Municipality is purely an extension of street lighting and is not essential. The question is whether the

The question is whether the Co.can be ordered not to carry out the work and the R.L.A. has been requested to advise.

2. As stated by the Government of India in its letter No.A826 dated the 26th March 1942, the restriction order dated the 7th March 1942 places an embargo only upon entering into fresh contracts and does not purport to bar the fulfilment of existing contracts. The agreement between the Nasik-Deolali Electric Supply Co. Ltd., and the Nasik Municipality was entered into prior tothe restriction order issued in respect of the said Co. The present requistion by the Municipality is based on that agreement and therefore the restriction order does not apply to the present case. It would apply only to fresh contracts or agreements to be entered into on or after 7th March 1942. In order therefore to absolve the Co.from its duties under the agreement, Government would have to issue an order under clauses (a) and(f)or sub-rule 2 of Rule 81 of the Defence of India Rules prohibiting the Co.from carrying out the work requested by the Municipality under the agreement. Such an order would have effect notwithstanding the terms of the agreement.

Sd/-
11/5

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.3936 dated the 11th May 1942.

M.RD
28/4/6

Office of the R.L.A.

The second proviso to sub rule (1)of rule 26 of the Defence of India Rules lays down that no order shall be made by the provincial Government under clause(c) of this sub-rule directing that any person ordinarily resident in the Province shall not be in the Province. The expression "ordernarily resident" has not been defined in the rules. The Word "ordinarily" means regularly and habitually, not casually (see 15 B.L.R. 68 and 30 B.L.R. 387). The Century Dictionary defines "resident" thus: "One whom has a residence residence." The word "resident" has the same meaning as "inhabitant" and means one who dwells or resides permanently in a place.(see Iyer's Law Lexicon P.1120)

In the present case, Sherkhan has always looked upon the village in Hazara as his native place and has spent fairly long periods there since 1928. If the frequent spells spells of penitentiary confinement and the periods which Sherkhan spent in Bombay in breach of the externment orders are excluded from consideration, as they should be, then it is manifest that his sojourn in Bombay for the remaining period was only of a —temporary character. Doing odd jobs and engaging in dubious activities cannot come within the purview of a settled or permanent business soas to qualify Sherkhan to be regarded as a person ordinarily resident in this Province. Consequently the externment order which Government proposes to pass against him under rule 26(1)(d) would be legally competent.

Sd/-
12/5

Remembrancer of Legal Affairs.

U.R. to H.D.(spl.)No 3966 dated the 12th May 1942.

.R.D.
3/4/56

R.I.EC. 3960
27-4-42.

Submitted.

By G.N.,H.D.(Pol.A.R.P.), No. S.D./A.R.P. 2476, dated 10-3-1942, issued in exercise of the powers conferred by clauses(a)and (b) of sub-rule(2)of rule 81 of the Defence of India Rules, the Provincial Govt. has directed that galvanized iron buckets shall not be sold at any place in the City of Bombay at a price higher th the price mentioned in the Schedule appended to the Notification. The General Manager of the B.E.S.T. Co. reports that he had called for quotations from certain firms in Bombay and the same are found to be more than the limits prescribed in the Notification. No purchase appears to have been made. In the circumstances the R.L.A. is requested to advise on the question whether the firms can be successfully prosecuted on the strengt of the quotations offered by them.

2. The answer to the questionraised by U.S., H.D. (A.R.P. appears to be in the negative. What is punishable under G.N.,H.D.,No.S.D./A.R.P. 2476, dated 10-3-1942 is a sale of galvanized iron buckets at a price higher than the price mentioned in the schedule. A sale means a transfe of property or an agreement to transfer property in consideration of a money payment or a promise thereof by the buyer.(Cf.sec.4(1)of the Indian Sale of Goods Act,1930). In this case the stage of sale has not been reached. Th B.E.S.T. Co. invitedquotations from the various firms an the latter offered to sell the buckets on certain conditions (e.g.that the offer held good for three days only etc.). The offer has not been accepted. A contract of

A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer(Cf.sec. 5(1) of the sele of Goods Act.) There having been no sale therefore in this case it does not appear that any of the firms can be successfully prosecuted as suggested. ~~An~~ An offer of sale at a higher price has not been prohibited by the said Notification- fication.

Sd/-
28-4-42

S.A.S.

I do not agree with Mr. Deshmukh. The attention of H.D. (Spl.) A.R.P. may be drawn to the R.L.A's opinion No.104-P-Confl. dated 9th September 1940. (a copy of which ~~may be forwarded~~ is put there with). As pointed out in that opinion the quotation of a price in excess of the maximum fixed under an --order issued in exercise of the powers under rule 81(2)(b)of the Defence of India Rules will be an act preparatory to the--commission of an offence under rule 81(4)and will itself be an offence under that sub-rule read with rule 121. Consequently the merchants who have in the present case quoted prices of galvanized iron buckets in excess of the maximum fixed under H.D.(Political A.R.P.)No.S.D./A.R.P. 2746issued in exercise of the powers conferred by -- clauses(a)and(b)of sub rule (2)of rule 81 of the Defence of India Rules would be liable to be prosecuted for the offence under rule 81(4)read with rule 121.

Sd/-
30/4

A.L.R.

M.R

Office of the R.L.A.

The attention of H.D.(Spl.) A.R.P. is invited to the R.L.A.'s opinion No.104-P-Confl. dated 9th September 1940 (a copy of which is sent herewith). As pointed out in that opinion the the quotation of a price in excess of the maximum fixed under an order issued in exercise of the powers under rule 81(2)(b) of the Defence of India Rules will be an act preparatory to the commissionof an offence under rule 81(4) and will itself be an offence under that sub-rule read with rule 121. Consequently the the merchants who have in the present case quoted prices of galvanized iron buckets in excess of the maximum fixed under H.D,(Political A.R.P.) No. S.D./ARP 2746 issued in exercise of the powers conferred by clauses(a)and(b)of sub-rule(2)of rule 81 of the Defence of India Rules would be liable to be prosecuted for the offence under rule 81(4)read with rule 121.

Sd/- P.N.M.
12/5

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.) A.R.P. NO. 3987 dated the 13th May 1942.

M.R.D.
8/4/56

Order of the R.L.A.

Thequestion for consideration is whether under clause 7 of the Bombay Rent Restriction Order. 1942. fines premia etc. paid before-

(a) the commencement of the order, and

(b) before 1-9-1940, otherwise than under an agreement entered into before 1-9-1940,

are recoverable.

2. The Bombay Rent Restriction Order, 1942, came into force on 23rd April 1942, on which day it was published in the Bombay Government Gazette. Sub-clause(1)of clause 7 of the Order provides that no landlord shall in consideration of the grant, renewal or continuance of a tenancy of any premises require the payment of any fine premium or any other like sum in addition to rent. Sub-clause(2)lays down that where any such payment has been made the amount shall be recoverable by the tenant by whom it was made from the landlord and may without prejudice to any other method of recovery, be deducted from any rent payable by him to the landlord. Sub-clause (3)provides that nothing in this clause shall apply to any payment under an agreement before the first day of September 1940. Clause 7 is not given any retrospective effect. The demand of such payments is by implication made illegal only from the date on which the Order came into force. Without the insertion in sub-clause(2) of clause 7 of some such phrase e.g. as "any time after 1st September 1940", that sub-clause could not be given retrospective effect. If all the provisionsof clause 7 are read together it will be clear that except in

~~it will be clear that except in~~ cases of an agreement entered into before the first day of September 1940 no landlord can charge after 22nd April 1942 any fine, premium or any other like sum in addition to rent and even if paid, the tenant can recover it from his landlord. It follows therefore that clause 7 does not apply to payments of fines, premia or any other like sums made before 22nd April 1942 irrespective of the question whether or not such payments were made under an agreement entered into before the first day of September 1940. Consequetly it would not be lawful for the tenants to recover fines or premits paid to landlords before 22nd April 1942. The ~~anwer~~ answer to both questions is therefore in the negative.

Sd/- P.N.M.
15/5

M.RD
28/4/6

Remembrancer of Legal Affairs.

U.R. to D., No. 4067 , dated the 15th May 1942.

Office of the R.L.A.

H.E.H.the Nizam's State Railway had placed an order dated 31st March 1942 with the Bombay Tyre and Rubber Company, Limited, for supplying motor covers and tubes as specified in that order. Most of those tyres and tubes were despatched before the Tyres(Temporary Prohibition of Disposal) Order, 1942,came into force on 25th April 1942. But some of the covers and tubes are yet to be despatched. The Company has therefore requested the Government of Bombay to give permission to rail the requisitioned goods to the Railway Company direct by its principals Messrs. India Tyre and Rubber Company,(India) Limited, Calcutta. It is stated in the H.D. office note that as the goods will be despatched from Calcutta and not from Bombay, the permission of the Government of Bengal seems necessary. Joint Secy.,H,D., is however doubtful about this in view of paragraph 2 3 of the Tyres(Temporary Prohibition of Disposal) Order, 1942. The R.L.A. is requested to advise whether the Bombay Government can grant the required permission in this case.

2. Sub-clause(1)of clause 3 of the said Order Provides that except as hereinafter provides no person shall for a period of one month from 25th April 1942 dispose of, or agree todispose of, or in pursuance of an agreement entered into before the twenty-fifth day of April 1942, make delivery of, any unused tyre or tube intended for use on wheel of a motor cab or motor car. Clause 3(2)(iv) of the said Order provides that the prohibition contained in sub-clause (1)of clause 3 shall not apply to the disposal or delivery of any tyres or tubes inaccordance with an expre

~~with an express~~ permission given by the Provincial Government. In this case since the tyres and tubes are in Calcutta and are propsoed to be delivered direct from Calcutta by the India Tyre and Rubber Company on behalf of the Bombay Tyre and Rubber Company to the Nizam's State Railway in pursuance of an agreement entered into before the 25th April 1942, the Government of Bengal would it seems be the appropriate Government to approach for the requisite permission under clause 3(2)(iv).

Sd/- P.N.M.
23/5

Remembrancer of Legal Affairs

SRL
23/5

M.R
28/4/6

U.R. to H.D.,No.4281,dated the 23rd May 1942.

Office of the R.L.A.

The R.L.A. had advised in his opinion No.4033, dated 14th May 1942 that if it could be shown that the Forces of His Majesty are being supplied with cigarettes and bidies manufactured from the tobacco stored in a certain warehouse and that such supplyis essential for the efficient prosecution of the war, then the building could be requisitioned. The R.D.has now ascertained that the bidies supplied to the Forces are manufactured from the tobacco stored in the Bonded warehouse and that part of the cigarettes supplied to the troops are also stored therein. The Secretary R.D.observes that a warehouse can be requisitioned for tobacco for the efficient prosecution of the war and that no notification declaring 'tobacco'as an 'essential commodity'under rule 34(3) is necessary. The R.L.A. is requested to advise whether the course suggested by Secretary, R.D. is legally feasible.

2. It is clearly stated in R.L.A.'s opinion above mentioned that it must be the case that His Majesty's Forces are supplied with cigarettes or bidis manufactured from tobacco stored in the warehouse and that such supply is essential for the efficient prosecution of the war. But there is another condtion implied in the opinion,namely that the loss of the warehouse would interrupt or impair that supply. If these conditions are fulfilled thenthe warehouse may be requisitioned without notifying tobacco as an essential commodity. It is presumed that R.L.A. is not expected to express an opinion whether such a supply is essential to the

~~is essential to~~ the efficient prosecution of the war.

Sd/- P.N.M.
26/5

Remembrancer of Legal Affairs.

M.R.D.
28/4/56

U.R. to R.D.,No.4337 ,dated 26th May 1942.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether a building can be requisitioned under the provisions of rule 75-A of the Defence of India Rules for the purpose of being used as a tobacco warehouse. Under rule 75-A it is ~~in opinion~~ open to the Provincial Government to requisition any property, moveable or immoveable, if in its opinion it is necessary or expedient so to do for securing the defence of Biritish India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintainig supplies and services essential to the life of the community.

2. The question whethere tobacco supplies fall within the category of supplies essential to the life of the community is largely a question of fact for the Administrative Department to decide. What is essential to the life of any particular community would normally depend on the standard of living of such community. It is true that the habit of smoking in this ovince is as widespread as the habit of drinking liquor. But smoking and drinking are more in the nature of luxury indulgences and can scarcely be regarded as something essential to the life of the community. An essential commodity has been defined in rule 34(3)as meaning food, water,fuel,light, power or any other thing essential for the existence of the community which is notified in this behalf by Government. Unless therefore tobacco is notifi

~~(2) is notified as a commodity esse~~

~~is notified~~ as a commodity essential for the existence of the community it would not be competent for Government to requisition a building for maintaining tobacco supplies. If, however, in the present case, it can be established that the Forces of His Majesty are being supplied with cigarettes and bidis manufactured from the tobacco stored in the warehouse and that such supply to the Forces is essential for the efficient prosecution of the war, then it may be possible in those circumstances to hold the requisition of the building necessary for a purpose connected with the efficient prosecution of the war.

Sd/- P.N.M.
13/5

Remembrancer of Legal Affairs.

U.R. to R.D. No.4033 dated the 14th May 1942.

M.RD
28/4

Office of the R.L.A.

The first question is whether an order served under rule 51-I(1)of the Defence of India Rules on the landlord to provide a safety room permits him to provide a room in the premises occupied by a tenant. Under Sub-rule(1)of rule 51-I, if in respect of any premises the Provincial Government considers it necessary or expedient so to do for the purpose of affording protection to persons living therein, it can by order require the owner of the premises to construct therein an air raid shelter in accordance with such requirements as to lay out as maybe specified in the order. If therefore the order requires that an air raid shelter(which may be a safety room) be erected in some part of ... premises occupied by a tenant, it will be the duty of the landlord lord to construct the shelter accordingly. As he will be acting in obedience to an order validly issued by the Provincial Government under rule 51-I he would be authorised to bring about the required structural alterations even in a room in the occupation of a tenant. The tenant cannot legally object or obstruct but it would be open to him either to terminate his tenancy and vacate the premises or tosecure a reduction in rent by amicable arrangement.

2. The second question is whether the landlord will be protected from any civil claim on the part of the tenant inregard to disturbance, loss of air and light etc. The answer to this is in the affirmative, provided there is an order by Government. Section 17(1)of the Defence of India Act gives explicit protection ~~to the landlord~~

to the landlord "No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder." But in order that this section should apply, there must be imposed upon the landlords the duty of building an air raid shelter. That duty may be imposed either by some section of the Act, or rule or order thereunder. If a landlord voluntarily constructed a shelter without an order from Government he whould not be entitled to the benefit of the protection given by section 13(1).

3. The third question is whether, if fould necessary, the landlord has a right to evict the tenant in order to comply with the order. It is the duty of the landlord toerect an air raid shelter as required. If the tenant prevents the landlord complying with anhh an order, the latter would be justified in evicting the tenant who cannot file any claim for sucheviction.

4. The fourth question is whether, when the tenant has not been evicted, the landlord can insist on the tenant keeping his premises clear of heavy or bulky articles, or keeping the premises accessible at all times by other residents of the building either by leaving the premises unlocked or by leaving the key with a specified person. It is premsumed that what is meant bycpremises in this question is the safety room, that has been selected as a shelter. Under rule 51-I(1)it is the duty of the landlord to construct a shelter as directed in an order. This duty carries with it the implied obligation to keep the shelter free from heavy, bulky or inflammable articles ~~and make it~~

and make it accessible to the tenants during an air ra
raid or there threatened air raid. The same obligatio
canalsobe expressly imposed on the landlord or the
tenant by an order under rule 81-K(1)(a).

5. The last question is whether any claim would ari
against Government in respect of loss or inconvenience
caused either to the landlord or to the tenant. The
answer to this is in the negative. Section 17(2)of th
Defence of India Act provides for protection of action
taken by Government under the Act. No suit or legal
proceedings can therefore lie against Government in res
pect of loss or inconvenience caused either to the lan
lord or to the tenant by any order passed under the
Defence of India Rules.

Sd/-P.N.M.
21/5

Remembrancer of Legal Affairs.

M.R.D.
28/4/56

U.R.to H.D.(Spl).ARP. No. 4223,dated 22nd May 1942.

Office of the R.L.A.

The questions for consideration are:-

(1)Whether trustees of baugs(which are trusts or wakfs belonging to the Mahomedan community) would be entitled to divert trust funds to the building of blast walls, assuming the trust includes the upkeep of the buildings as one of its objects.

(2)Whether the trustees would be entitled to use trust funds if an order was served on them under the Defence of India Rules, or whether it would be necessary to amend the Wakf Act.

The questions being hypothetical, it is not possible to give a definite opinion for much would depend upon the terms of the wakfnama of each wakf. On the assumption that upkeep of the property is one of the objects of the trust, the expression "upkeep would , it seems, include taking normal or necessary precautions for the safety of the property. A good case could be made out for the proposition that in these abnormal times the erection of blast walls is a necessary precaution. It would further appear that by virtue of his office a mutavali has the right to protect the wakf property. Although the wakf property is not vested in the mutavali, he has the same rights of management as an individual owner. A mutavali is not exactly a trustee in the sense in which the expression is used in the English Law. But he has duties akin to those of a trustee(see Mull's Mahomedan Law, 11th Edn.page 168). It is the duty of trustees of charities, as it is of all trustees, to get in and protect the property entrusted to their charge (see

(see Tudor on Charities, page 244). Blast walls are presumably intended to protect buildings as well as inmates. Consequently, subject to the terms of the wakfnama, if any, it would be lawful for a mutavali to meet the expenses of erecting blast walls for the protection of wakf buildings from the trust funds without laying himself open to the charge of diverting or misusing the trust funds.

If an order under rule 51-I or 51K of the Defence of India Rules is served on the mutavali directing him to erect a blast wall or air raid shelter or to take such measures as maybe specified in the order, it would be competent for him to carry out such directions even if it be contrary to the terms of the wakfnama. (See section 3 of the Defence of India Act). Consequently, no amendment of the Wakf Act would be necessary.

Sd/-P.N.M.
25/5

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.)A.R.P.,No. 202-Confl, dated 22nd May 1942.

M.R.
28/4/6

Office of the R.L.A.

The question for consideration is whether the right rights of Government in salvaged materials covered by the

(1)War Risks(Goods)Insurance Scheme and
(2)War Risks(Factories)Insurance Scheme, are

properietary or fiduciary.

The view taken by D.S. ,F.D.at P.24 ante that the position of Government is fiduciary and not prepretary appears to be correct. The conductions conditions subject to which the policy or insurance would be issues are laid down in the second Schedule to the War Risks (Goods) Insurance Rules and to the War Risks (Factories) Insuarance Rules, 1942. Condition 8 of those conditions gives power to the Government agent on the happening of any loss or damage in respect of which a claim may be made, to enter, take or keep possession of the building or premises where the loss or damage has happend and to take possession of and deal with such property for all reasonable purpose and in any reasonable manner. It is stated in the said condiction that this condtion shall be evidence of the leave and license of the Insured to to the Governor General so to do.

Sd/P.N.M.
2/6

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl) A.R.P. No. 4562 dated the 3/6/194

.R.D.

R.I.NO. 4897
3-6-42.

Submitted.

The Central Govt. has issued an order controlling food grains under rule 81(2) of the D.of I.Rules. The order has been republished in the B.G.G.,but not brough into force in this Province under para.1(2)as yet. par 4 provides that the licenses issued under the Order shall be in Form 'A' Condition 4 of Form'A' requires th licensee to submit to the District Magistrate every month a return of stocks, receipts and deliveries of the foodgrains. So far as Bombay City is concerned, it is proposed that the return should be submitted to the Asst. Director of Civil Supplies (Licensing Deptt) instead of the District Magistrate. The question raise for the consideration of the R.L.A. is whether the necessary amendment in Form A can be made by the Provin cial Government or will have to be made by the Central Government.

2. The proposed amendment of clause 4 of the license in Form A in the second Schedule to the food-grains order 1942 will have to be made by the Central Govt. and not by the Provincial Govt. The order is made by the Central Government and power to amend the the Order rests with that Govt. Para.1(2)of the orderempowrs the Provincial Government to bring it into force on the desired date, but not with any modifications. The Central Govt.will therefore have to be approached.

Sd/-
3/6/42

I agree. Reply maybe as in para 2 of Mr. Deshmukh's

Reply may be as in para 2 of Mr.Deshmukh's note

Sd/-
3/6/-

ABR

I agree. Reply may be amended note

Sd/-
4/6

R.L.A. Reply in terms of para 2 as amended.

Sd/-
4/6

Office of the R.L.A.

I do not think the R.L.A.'s opinion No.3693,dated the 9th May 1942 requires any modification.

2. The opinion contained in the letter from the Government of India,Defence Co-rodination Department, No.1054-ORO/41 dated the 29th September 1941 printed in in the preamble to Government Resolution,Revenue Department, No.5883/39 confl. dated the 10th November 1941 was given with reference to the then existing rule 76 of the Defence of India Rules which made no distinction between requisition and acquisition and expressly gave to Government the power to dispose of property requisitioned Sub.rule(2)of rule 76 was amended for the first time on 26 th December 1941 acts to give Government the power to acquire property requisitioned by serving a notice of acquisition. Rule 76 is now replaced by rule 75A which contains a provison similar to sub-rule (2). Consequently a property requisitioned cannot be now considered to be acquired unless a notice of acquisition is served on the owner, althoughit could have been so considered in September 1941 when the aforesaid opinion of the Government of India was given. It would seem that the compensation payable to the owner of property merely requisitioned will have to be determined under rule 96,but when Government acquires the property requisitioned by serving a notice of acquisition, section section 19 will apply. The questionconsidered in R.L.A's R.L.A.'s opinion No.3893 dated the 9th May 1942 relates to property merely requisitioned and not acquired. Consequently that opinion of the R.L.A. appears to need no modification.

It would, however, be better if a reference is made to the Government of India for clarification.

Sd/- P.N.M.
28/5

Remembrancer of Legal Affairs.

U.R. toR.D. No. 4426 ,dated the 29th May 1942.

MR.D.
28/4/56

R.I.NO.5676
30-6-42

Submitted.

2. Pease see R.L.A.'s opinions No.3893 dated the 9th May 1942 1942 and No.4416dated the 29th May 1942. The R.D. now points out that no provision for determining compensation in the case of an immoveable property requisitioned or acquired has been made in rule 75-A and old rules 76&79 have been omittedfrom rule 96 which contains provisions for determination of compensation while rule 75-A has not been included in that rule. Consequently rule 96 would not apply to immoveable property merely requisitioned under rule 75-Abut compensation will have to be determined under section 19 of the Defence of India Act. A reference in the matter is being made tothe Gogernment of India.

3. In the R.D.Office note dated 25-6-42. it is stestatdd that papers may be shown to the R.L.A. for information. The Secy.R.D.has not stated anything in his note about a reference to the R.L.As. but he has marked the case to the R.L.A. before submitting it to A(R).

4. The view taken by the R.D.that section 19 of the Defence of India Act, 1939,applies to this case appears to be correct. In any case rule 96 of the Defence of India Rules does not apply as a feference to old rule 76&78has been omitted from rule 96 and a reference to new rule 75-A is not substituted in its place. Section 19(1)of the Defence of India Act. 1939, provides that where by or under any rule made underthis Act, any action is taken of the nature described in sub-section(2)of section 299 of the Government of India Act, 1935,there sh-

there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles, set out in the said section sub-section(2)of section 299 of the Govt. of India Act, 1935, interalia provides that neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulosry acquistion for public pruposes of anyland or any interest therein unless the law provides for the payment of conmpensation for the property acquired and either fixed the amount of compensation or specified the principles on which and the manner in which, it is to be determined. Under sub-section(5) of section 299 the term 'land' in that section includes immoveable property of every kind and any rights in or over such property. By requisitioning immoveable property,certain rights in or over the propertyare compulsorily acquired for a public purpose through for a certain period only and not permanently and consequently section 299(2)does not make a difference between compulsory acquisition for temporary purposes and for permanent purposes. This appears to have been the view adopted by the Government of India even in respect of new rule 75-A and therefore it appears reference to that rule has been omitted from rule 96. However, as the matter is being referred to the Government of India by R.D., that Government will make its intention clear. The papers may be "Seen and returned.

Sd/-
30/6

A.L.R
Sd/-
1/7

R.L.A. Sd/- P.N.M.
1/7

U.R. to R.D.No.5462 dated 3-7-42

M.R.D
28/4/6

Submitted.

2. It seems that the Garrison Engineer, (h)Bombay, referred to ~~some~~ same questions arising out of the liability of Govt. to pay compensation for requisitioning property under Rule 75-A of the D.of I,Rules, to the Solicitor to the Central Govt. at Bombay and on his advice the opinion of the Advocate General, Bombay was obtained. A copy of containing the case for opinion of the Advocate General and the opinion of the Advocate General is at PP. 9-12 ante. The H.D. (Spl.) A.R.P. has requested R.L.A. to state whether he agrees with the A.G.'s opinion.

3. When property is requisitioned under section 75-A compensation in respect of it will have to be determined determined under section 19 of the Defence of India Act.(See notes underlying R.L.A.'s opinion No.5462, dated the 3rd July 1942). Under that section if the amount of compensation cannot be fixed by agreement, Govt.has to apoint an arbitrator who is making his award shall have regard to the provisions of section 23(1) of the Land Acquisition Act, 1894 so far as the same can be made applicable. The question referred to the Advocate General arise generally in fixing compensation to be paid to the persons whose property is requisitioned by Govt. The first 5 questions are raised in respect of a particular case but as the Home Deptt. (A.R.P.)A wants guidance in respect of all the cases in general, these questions may be considered from general point of view.

P.213 of File O.D.of I.42, Slip F.

4.

4. The first and the second question may be combined. The question for consideration is:-

(1) and(2) Whether in fixing compensation,Govt. should have regard to the higher rent which the owner had to pay for changing his residence or whether the compensation should be fixed on the basis of the fair rental of the premises which are requisitioned

> Without taking into consideration the loss or damage whichthe owner suffers by having to pay higher rent for the premises in which he shifts.

The Advocate General holds that the owner is not entitled to recover any higher rent which he has to pay for the premises in which he shifts. The Garrision Engineer's letter at P.3 refers to some Govt. orders on the point.(But on informal enquiries in R.D.it is ascertained that no such orders bearing directly on the point of compensation for having to pay a higher rent have been issued by that Deptt.) section 23(1)of the Land Acquisition Act provides that in determining compensation to be awarded for land acquired under the Act, the Court shall take into consideration the provisions stated in the 6clauses of that section. The provision(fifthly)is as follows:-

> "if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses(if any) incidental to such change."

The question that arises therefore whether when the person interested is required to pay higher rent, ~~it can be said~~

it can be said that he has incurred that expenses incid dental to his change of residence. In Widder vs. North Straffordshire Rail Co.(1878)4 Q.B.D. 412 (432) it was stated by Bramwell L.J.that if rent was greater that ought to be compensated for. These remarks appear to obiter dictum. In that case the question was of assess ment of compensation under the Lands Clauses Consolida- tion Act, 18845 which does not appear to contain any provision similar to section 23(1)(fifthly) of the Land Acquisition Act. Besides no other decided Indian Case has been tracedon this point. The word "Expense" means that which is expended, laid out or consumed (see P.724 of Blacks Law Dictionary). Running expenses are also included in the term expenses.

M.R.D.
30/4/56

It is true that the clause very clearly refers to expenses incurred on shifting,removing of furniture fixtures etc. But the clause is silent on the point and doen not use any such word as 'incurred or to be incurred' in future, If after trying hard, the the person whose property is requisitioned is unable to find out a place except for a higher rent, it is equitable that factor might be taken into consideration while fixing compensation. "Where the owner is obliged to incur expenditure for the removal of his goods, furnitures etc. and where he is obliged to pay a higher rent this clause states that those things might be taken into consideration in awarding compensation in addition to the market value of the land."(P.167 of Venkatramans Venkatraman's Land Acquisition Act and P480 of On Prakash's Compulsory Acquisition of Land in British India). Besides the acquisition under the Land Acquisition Act is of a permanent character whereas requisition under the D.of I. Rules is of a temperary character and the abrbitrator should have regard to this fact while fixing compensation(See clause(e)(ii) of section 19 of the D.of I, Act.). Under the Land acquiAcquisition Act compensation is paid in a lump sum whereas under the D.of I. Rules monthly payment can by made. The point is however not free from doubt.

The remarks appear to be based on the English ruling stated above.
R.T.K.

Looing to wording of clause 5 of section 23(1)of the Indian Land Acquisition Act it appears that the A.G.'s view is correct.
R.T.K.

5. The view taken by the Advocate General on question No.3 that the cost of the removal of household furniture etc.is properly payable to the owner and is covered by the fifthly provision in section 23(1),is correct.

5. The expenses referred to in question No. (4)of renovating, refurnishing and refitting the new premises are not covered by the 5th provision in section 23(1)of the Land Acquisition Act as they are not the direct consequence of the need to shift to the new premises. Even the each case will have to be decided on merits. In some cases for example in cases of shops, they might not prove to be too remote.

7. The AdvocateGeneral's view on the 8 th question regarding monthly compensation for higher school fees, taking of school leaving cartificate, buying of new books is correct. These expenses are too remote and are not covered by the 5th clause in section 23(1)of the Land Acquisition Act.

8. Questions(6),(7)and (9) relate to premises which have been rented and the questions are about the rights of the tenants to recover compensation in respect of property which is requisitioned or acquired absolutely under Rule 75-A of the D.of I.Rules. The view expressed by the Advocate General in respect of all these questions,is correct. In case of premises to which the Bombay Rent Restriction Order, 1942,does not apply, the tenant is not entitled to any compensation if the premises rented by him are requisitioned or acquired after the period mentioned in the notice to vacate has expired. If however the premises rented by him are requisitoned while his tenancy is subsisting,he is entitled to compensation. In respect of such a case if the premises are acquired absolutely compensation will have to be appoitioned between the owner and and the tenant. Compensation is payable to the person interested in respect of any land or right to land which such person holds. Each case will howeverhave to be decided on merits. Section 8 of

the Bombay Rent Restriction

MJR

Bombay Rent Restriction Order, 1942, provides that the landlord shall not be entitled to the recovery of poss possession of any premises so long as the tenant pays, or is ready and willing to pay rent to the full extent allowable by this Order and performs the other condition of tenancy. The proviso to this section provides an exception to this section.

M.R.D.
30/4/56

The Bombay Rent Restriction Order, 1942 is issued under clauses(bb)and(f)of sub-rule(2)of Rule 81 of the D.of I Rules and under section 3 of the D.of I.Rules, this Order would prevail over any other contract which the landlord may have with his tenant. In cases to which the Bombay Rent Restriction Order applies, the position of the the tenant will be the same as in the case of a subsisting tenancy

9. Question No.10as follows:-

"Whether it is within the power of the Govt.to requisition premises merely for the purpose of giving accommodation to persons whose own property has been requisitioned By Govt."

The view taken by Advocate General is correct. Requisition of premises for giving accommodation to persons whose properties have been requisitioned by Govt. cannot be said to be necessary or espedient for securing the defence of British India, pulic safety the maintenance of public order or the efficient prosecution of the War and cannot fall under Rule 75-A of D.of I.Rules. If the Rules determining compensation had provided for exchange of premises or for accommodation of the persons whose property has been requisitioned, then this purpose would have been covered by rule 75-A. As the law stands however, such a question does not appear to be covered by Rule 75-A as it is very remotely--connection with the efficient prosectuion of the war.

10. Questions(11)and(12)relate to the requisitioning of moveables expecially Hospital equimpment. The view expressed by the A

The view expressed by the Advocate General that it is not within the power of Govt. to requisition the Nursing Home equipment merely for the propose of placing the same at the disposal of the Hospital Authorities, is correct. This question is akin to ~~immoveable~~ question No.10which relates to requisitioning of immoveable property. The D.of I.Act. and Rules do not contemplate giving moveables in exchange of moveables requisitioned. The compensation is to be paid for such requisition under Rule 75-A(4)of the D.of I.Rules. It does not appear permissible to requisition moveables for exchanging them with persons from whom other moveables are requisitioned but it can be administratively managed.

11. The view taken by the Advocate General on question No.13 is correct. Such a provision is contained in the 3rd and 4th provision of section 23(1).

12. The 14th question is as follows:-

"Whether the Govt.are bound to pay over and above the amount of compensation a sum equivalent to fifteen per cent on the amount of compensation? "

The Solicitor states at P.5 ante that the Advocate General has not answered the question through an oversight but at the conference he had with theAdvocate General, the Advocate Generalconfirmed his opinion that Govt. are not bound to pay over and above the amount of compensation a ~~ek~~ sum equivalent to 15 % as provided in section 23(2). This view is correct. Clause(e)(i)of section 19of the D.of I. Act refers specifically tosub-section(1)of section 23 and it is apparent therefore that Legislature did not mean the the provisions of section 23(2)to apply otherwise mention would have been made of section 23 and not of section23(1).

Sd/-
11-2

R.L.A. may agree with the opinion of the A.G. on all the point.

Sd/-
17/12

M.R.D.
30/4/56

Questions 6,7 and 9. The Solicitor's notes do not make it clear whether the landlord is envisaged serving notice on the tenant at the instance or suggestion of the requisitining authorities. Cases in which the landlord had given notice to his tenant before he (landlord)learned of the requisition must be extremely rare. It is presumed therefore that the landlord has given notice merely because of the requisitioning. If the Rent Restriction Act or the Restriction Order appplies , than it seems that the landlord will not be able to give notice and the tenant will therefore obtain the incidential expenses of removal. On the other hand, the unfortunate ~~tena~~ tenant, who is not protected by the above mentioned Act or Order, will not get the incidental expenses if the landlord has given notice. This seems to me quite unjust if the notice is given merely because of the requisitioning. It does not seem proper for Government in these circumstances to encourage or countenance giving of notice. And if Govt. is aware that the notice is due only to the requisitioning Govt.would be justified in paying to the tenant the incidental expenses.

I do not think we need troublet about this distinction as the Adv.Gen'sreply to query 6 is based on the assumption that the requisitioning takes place on the expiry of the period mentioned in the landlord's notice to vacate.

Questions 10 and 11. ~~I am not sure that I under understand the agrument in the answer to question 11.~~

P.T.O.

Questions 10 and 11. I am not sure that I understand the argument in the answer to question 11. If it is what I think it is, I do not see how the same method cannot be used to justify the requisitioning of houses to provide accommodation for persons whose property has already been requisitioned. I do not think the metiod is legal in the cases either of houses or hospital equipment. But surely if the hospital equipment is required its requisitioning can be justified smiply as being necessary for the efficient prosecution of the war. For that purpose not only military hospitals with their equipment are required but also civil hospitals with their equipment in order to deal with air raid casualties or an overflow of military casualties.

I think the Adv Gen's opinion is correct. If a civil Hospital is asked to vacate and vacate and make room for a military Hospital its equipment can be requisitioned for the establishment of a military Hospital. A civil Hospital can be said to be an essential service and therefore the equipment of a private nursing home can be requisitioned for the purposes of the civil Hospital which was made over to its own equipment to the Military Hospital.

Question No.14. I think some caution is required, here. The Advocate General has not answered. that is probably a slip. But I do not ~~think~~ think the question is simple, at least in its implications. It is true that sub-section (2) of section 23 of the Land Acquisition Act does not apply and in that sense Govt. is not bound to grant 15% of the market value in addition. But is the Arbitrator or the High Court precluded from granting extra compensation in view of the compulsory nature of the acquisition? Why should a compulsory acquisition during under the Land Acquisition Act be given ~~this Special compensation and~~

It wd. I think be dangerous to apply the principle of 15% compensation to property which is merely requisitioned and not acquired. Requisition is in other words temporary acquisition. 15% compensation is generally given for loss of permanent rights in property and not for temporary rights.

Requisition is not acquisition.

this special compensation and not a compulsory acquisition during wartime under the Defence of India Act? There may be good reasons for that distinction, but they are not immediately clear.

If in the case of acquistion the Abbitrator is not precluded from considering the question of this special compensation, it would probably be desirable for Ge Government itself to fix the amount of special compensation e.g.,as a percentage of the market value, rather than leave it to the discretion of individual officers or Arbitrators.

A distinction is made in rule 75-A of the D.of I. Rules between'requisitioning''acquiring". That distinction is valid for this question of special compensation The person whose land is perely requisiti...dx whould seem to have less right to be specially compensated.

The absence of any mention of sub-section(2)of section 23 of the Land Acquisition Act in section 19 of the Defence of India Act may be accounted for by the fact that section 19 envisages temporary occupations of land and for these it would obviously be inappropriate to prescribe the same amount of speciab compensation as for permanent occupations. There seems strongs ground here for agruing that the absence of any mention of sub-section(2)of section 23does not mean that Govt.or the Arbitrator is precluded from granting any such special compensation.

~~This is a very important question and I think it is~~ the questions and replies match mainly to requisitioned property, and not to acquired

This is a very important question and I think it is desirable to have the definite opinion of the Advocate General. I think also the question ought to be

The questions and replies match mainly to requisitioned property, and not to acquired property.

framed in this way:-

1. Is Govt.precluded under section 19 of the D.of I.Act from awarding compensation on the lines of sub-section(2)of section 23 of the Land Acquisition Act.-

(a)in the case of acquisitions under Rule 75-Aof the Defence of India Rules, and

(b)in the case of requisitionings under that Rule?

2. Is the Arbitrator to be appointed under sectio section 19 of the Defence of India Act so precluded-

(a)in the case of acquisitionings

(b)in the case of requisitionings?

3. Can the Central Govt.make a rule under rule 19 of the D.of I Act precluding the Abbitrator from considering the question of special compensation on the lines of subsection(2)of section 3 of the Land Acquistion Act.?

If Govt.and the Arbitrator are nor so precluded it would then appear for Govt.to decide whether any sp special compensation is to be awarded and if so,whether a rule ought to be made prescribing the manner of fixing limit of such compensations.

I agree that the answers to the other questions are are generally rights, although there might be individual dual cases where special consideration would weigh.

I have marked this Urgent.since cases are being held.

Sd/-
21/12

P.T.O.

R.L.A.

See my marginal remarks. I have discussed with A.L.R. who agrees that our reply should be as under:

The R.L.A. is in general agreement with the Advocate General's opinions on the points raided in so far as theyrelate to requisitioned property.

Id/- P.N.M.
29/12

M.R.D.
30/4/56

Ref.No.3015 of 1942.

Office of the Solicitor to the Central
Government of Bombay,
51 Mahatma Gandhi Road, Fort,
Bombay, the 23rd October 1942.

From

Dhanjisha Hosangsha Nanavati, Esquire, B.A., LL.B.
Solicitor to the Central Government at Bombay.

to Captain J.R. Ritchie.

Re:- Defence of India Act
and
Re:-Requisition of Properties.

Sir,

I have the honour to enclose herewith a copy of the case for opinion sent to the Advocate-General together with a copy of his opinion thereon.

2. It appears that Question No.14 has not been answered by counselapparently through an oversight. However, there is no doubt that Government are not bound pay to pay over and above the amount of compensation a sum equivalent to fifteen per cent thereof as provided in section 23(2)of the Land Aequisition Act. This was my opinion and the same was confirmed at the conferenc counsel had with us.

3. The orgginalletters referred to in the case for opinion are alsoreturned herewith.

I have the honour to be,
Sir,
your most obedient servant.

Sd/-

Solicitor to the Central Govt.
at Bombay.

M.R.D.
10/4/56

Re. Defence of India Act

and

Re: Requisition of properties.

CASE FOR OPINION

This case for opinion is sent by me on behalf of the Central Government.

Under Rule 75A of the Defence of India Rules, the Central Government is entitled to requisition any property, moveable or immoveable and make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning. Under section 19 of the Defence of India Act it is provided that where by or under any rule made under the Act any action is taken of the nature described in sub-section(2)of section 299 of the Government of India Act 1935x compensation shall be paid the amount of which shall be determined in the in the manner mentioned in the section. Section 299(2) of the Government of India Act provides that the Legislature shall not have the power to make any law authorising the compulsory acquisition for public purposes of any land unless the law providesfor payment of compensation for the property acquired so that reading section 299(2)of the Government of India Act with section 19(1) of the Defence of India Act compensation has to be paid whenever any land or building is requisitioned under Rule 75A of the Defence of India Rules.

It is further provides in section 19(1)of the Defence of India Act that if the amount of compensation cannot be fixed by Agreement theGovernment has to appoint as arbitratorax a person qualified as mentioned under the section and that the Arbitrator in making his award shall have regard to the provisions of section 23(1)of the Land Acquisition Act so far as the same can be made applicable. The Arbitrator is also to have regard to the question whether the acquisition is of a permanent or temporary character.

The Garrision Engineer on behalf of the Central Governmet requests the Collector to issue orders of requisitions and such orders of requisition are made in a form briefed herewith at pages.....1....

Difficult questions often arise as regards the amount payab to the owners of the properties which are requisitioned. It sometimes happens that when a property is requisitioned the onwe makes a claim for compensation on the ground that he has to incu expenses of removal of furniture and other incidental expenses. He alsomakes a claim for compensation on the ground that he cann -find other cuitable premises except on payment of higher rent. Further complications arise by reason of the fact that the Rent Restrictions Act is at present in feerd force in Bombay.

As a typical example of a claim for compensation a brief herewith at pages .....a letter addressed by one Mr.Yahy G.Kherualla to the Collector of Bombay Suburban District dated 21st September 1942. It will

It will will be seen that the party makes a claim at the rare of Rs.180/-per month and also makes a further claim of Rs. 652/-in a lump sum. The monthly sum of Rs.180/-is claimed under the following heads viz:-

1. The amount of the rent which he has to pay for accommodation elsewhere.
2. A monthly compensation for fruit and flowers in the garden of the premises requisitioned.
3. A monthly rent for the use of tube-bore well pump etc.
4. A monthly compensation for the prevalent Higher scales of Bombay school fees for children.

He also claims the lump sum payment of Rs.652-8-0 under the fullowing heads,viz:-

1. Charges for removal of furniture etc.
2. Costs of renovating, refurnishing and re-fitting new premises.
3. Compensation for a month's fees and school ving certificates for the children and other incidental expenses consequent on the shiftingof the residente to bombay.

It appears to me that the claims have been rather mixed up e.g. the claim for the fruit and flowers in the bungalow which is acquired and for the use of the tube-bore will in the same premises stand on a different ground from the claim for the rent in respect of the premises to be occupied in Bombay and the compensation for school fees etc.

If the Government have to keep regard to the provisions of section 23(1)of the Land Acquisition Act it would seem that compensation should be paid under the following heds,viz

1. Compensation should be paid by way of rent for the premises including the use of the fruit and flowers in the garden and the use of the tube-bore well on the basis of the fair rent which would be payable in respect of the premises with all amenities as aforesaid.

2. Compensation should be paid by reason of the person interested being compelled to change his residence or place of business and reasonable expenses incidental to such change should be paid(See section 23(1)5thly of the Land Acquisition Act.)

It would therefore be a question whether compensation should be paid on the basis of what the owner would have to pay by way of rent for occupying other premises. If the Government is to go into the question of compensation on the basis of what the owner pays for other premises then all sorts of further questions would arise as to how the new premises compared with the old and whether the rent paid for the new premises is proper or not etc. It may be that the owner finds some difficulty in obtaining new premises but the section of the Defence of India Act provides that compensation is to be paid on the basis of section 23(1)of the Land Acquisition and having regard to the question whether the requisition is of a permanent or temporary character. It would therefore seem that the question of the rent paid by the owner for other premises is irrelevent.

Counsel's attention is however drawn to Velinkar's Law . Compulsory Land Acquisition, first edition, page 142, commenting on the amount of compensation under the head "5thly" in section 23(1, of the Land Acquisition Act. It is here pointed out that if a shop is taken and the shopkeeper has to go to another shop and pay more rent for it or get a shorter lease, these points, have tobe considered. Bidder v/s North Staffordshire Rail Company 1878 4 Q.B.D., 412(422). Also the fact that the new premises are less convenient and will abstracted less customers, R V/s Beard, 1894, 2 10 T.L.R., 545. Loss incurred until other suitable premises are obtained, Judd v/s Hull Dock Company, 1846, 9Q.B. 433. Loss on the value of fixtures if not taken, Gibson v/s Metropolitan Board of works 1883 25 Ch.D., 472 C.A. is also quoted to show that loss of business and goodwill has to be considered. -Counsel counsel is requested to go through the above mentioned English cases and consider how far they are relevant on the present issue.

It must be pointed out that the English cases though serving as a guide should not be made literally applicable as the method of valuation may be different and the particular statutes have to be considered in each case. Under section 23(1) 5thlythe owner is entitled to reasonable expenses incidental to change of reside dence. The word "Expenses " should be distinguished from the word "damage" which occurs uunder the various heads e.g., the second the 3rd and the 6th heads. I think that as the word "expenses" has been used underthe head fifthly all that the owner is entitled to is to cost of removing the furniture, fixtures etc. and possibly costs of renovating andthe refurnishing in case the old material cannot be suitably used for the new premises. I do not think that any compensation could be claimed by the owner on the ground that he has to pay a higher rent at his new place of residence. The cases quoted in Mr. Velinkar's book are mostly cases of shifting of business premses which I think stand on a different footing. If for example a factory is requisitioned by Government thena question would arise as to whether Government should not compensate the owner for any reasonable damage or loss would be a compensation payable in respect of the property which is acquired and not a compensation payable in respect of the property which is acquired and not a compensation payable on the basis of the value of the property to which the owner shifts. This last mentioned basis can only come under

Which he may suffer by reason of the business being removed But this lossthe head 5thly and as pointed out above the use of the words "reasonable expenses" under that head precludes an investi gation regarding a higher rent paid or other loss suffered by the owner by the shifting of the premises. Counsel is requested to consider whether the above reasoning is correct or whether the owner has to pay a higher rent for the premises into which he shifts is relevant.

Four councel's reference I brief herewith at pages-..... copies of certain correspondence which has passed between the Collector and one Mr. V.S. Threlfall of paddy Coats, Andheri. His premises at Andheri have been requisitioned. In his letter of 1st September 1942 to the Collector he stated that though he ade made an extensive search at Malad, Goregaon and Andheri he could find no suitable accommodation. In his letter of 2nd September he stated that he had a call from the landlord of a house at a Goregaon but he stated that as that was some distance out of

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out of Andheri and there would therefore be additional expenses besides charges for electricity, water and season tickets he should be entitled to be paid by by Government a sum of Rs.175/- per month which would include the rent of Rs.125/-which he would pay to the new land-lord and Rs.50/-for the extra expenses.

It appears that cases of this kind are cases of genuine hardship but the question still arises as to whether the compensation can be considered as expenses incidental to the change of residence within the meaning of the section.

As regards the compensation for higher scale of school fees and one month's fee school leaving certificates etc,, claimed by the claimant in the particular case under consideration, I think the same are too removte. They cannot properly be called "expenses incidental to onthe following points. viz:-

Questions	Answers
1. Whether in fixing the compensation in the particular case undqr consideration, Government should have regard to the rent of Rs.145per month paid by the owner in respect of the premises at Bombay into which he shifts.	The Compensation payable to a claimant is to be determinedon the basis of the market value of the land at the date of the requisition or acquisition. I am of opinion that the owner is not entitled to recover any higher rent, which he has to pay for other premises, to which he has shifted.
2. Whether Government would be justified in paying compensation on the basis of the fair rental of the premises which are requisitioned without taking into consideration the loss or damage which the owner suffers by reason of having to pay higher rent for the new premises.	Yes.
3. Whether the sum of Rs.250 being charges for removal of household furniture etc.are properly payable to theowmner.	Yes, This item is covered by the 5th provision in section 21(I).
4. Whether the sum of Rs.300 being the costof removaling refurnishing and refitting the newxpremises at Bombay is properly payable to the owner.	No. I think this item will stand on the same footing as the item mentioned in the 2nd query.
5. Whether the owner is entitled to a montly compensation for the prevalent higher scale of Bombay school fees(itemNo.4)as also compensation for one month's fees, school leaving certificates,	No.

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entrance fees, new books etc., (item No.7) as claimed by the owner.

Another question which usually arises in connection with the compensation is in relation to monthly tenants to whom usual notices to quit has been given by the landlord himself and (2)monthly tenants to whom such notice have not been given by the landlord but whose premises are requisitioned without the help of the landlord.

Inthe first case it would seem to me that the tenant would not be entitled to any compensation so far as Government are concerned the premises may have been requisitioned by the Government from landlord but so far as the tenant is concerned his right to occupy the premises ceases on the termination of the notice to quit. He would not I think, therefore, be entitle to anycompensation either on the ground of having to pay a higher rent elsewhere or removal of furniture or any other causes.

If however the landlord has not given such a notice and th premises are requisitioned by the Government it would seem that the tenant would be entitled to costs of removal of the furniture and if the he has been removed immediately e.g.in the middle of a month, and he suffers a loss by reason of his being compelled to pay a rent twice over or in any other way, he would I think be entitled to compensation in respect thereof. Counci is therefore requested to advise me-

Questions.	Answers.
6. Would any compensation be payable to a montly tenant who is called upon to vacate at the termination of a proper notice to quit given by his own landlord?	No. If a tenant is liable to vaca on a proper notice being give to him by his landlord for the purpose, I do not see how such tenant is affected by any re-requisition or acquisition which is effected after the period mentioned in the notic to vacate has expired.
7. What would be the rights for compensation of a montly monthly tenant who is called upon to vacate the premises without a notice to quit having been previously served upon him?	If the premises occupied by a monthly tenant are requision while his tenancy subsists i is the tenant, who is entitle to the compensation payable under section 23(1) of Land Acquisition Act for the requ aition Act for the requisit If the property is acquired absolutely the compensation will have to be apportioned between the owner and the te tenant.

P.T.O.

8. For the purpose of the last mentioned two questions, I have assumed that the Rent(Restriction)Act does not apply to the premises in question. If,however,the said Act applied then it would seem that different considerations would arise. Ordinarily a tenant has a right to remain in the premises on payment of the particular standard rent and he cannot be ejected except under the special cicumstances mentioned in the Act, It would therefore seem that if he is compelled to vacate the premises he might find considerable difficulty in getting new premises and may suffer loss if he has to shift to a place where the Act does apply he cannot get suitable accommodation except onpayment of a larger amount than the rent which he has hitherto been paying. It would seem that a tenant in a place where the Rent Act applied would have a sort of special interest in the premises and would be entitled to compensation under the head 23(1)first of the Land Acquisition ~~Act~~ Act. Counsel is therefore requested to advise me on ~~the~~ the qestion:-

9. Whether the monthly tenant of a premises in a place where the Rent Act applies would be entitled to special rights of compensation and if so what?

If a monthly tenant is entitled to the benefit of the Rent Act and is therefore not liable in law to vacate it is such tenant who will be entitled to the compensation payable under section 23(I)and not the landlord,for the requisition. If the property is acquired absolutely , the compensation will have to be apportioned between the owner and the tenant.

Another question which arises by reason of the prevalence of the Rent Act is whether Government can requisition other premises not for the purposes of the troops etc. but merely for the purpose of giving accommodation to a tenant who has been compelled to vacate other premises requisitioned by Government. It often happens that a whole building is requisitioned by Government for the purposes of the troops. The landlord or ther tenants desire to shift to some other property which may be lying vacant but the owner of the property may ask an exorbitant rent or a long lease before allowing the landlord or the the tenants to occupy the same. In such a case could Government requistion the other property which is vacant merely which have been requisitioned andthe tenants of the said premises? The rights of Government to requisition property are wide as will appear from section 75A(1). The question is whether a regarding quisitioning for the purpose mentioned above would be one "for securing the defence of British India,public safety, maintenance of public prederor the efficient prosecution of of the war or for maintainig supplies and services essential to the life of the community." Counsel is therefore requested to advise:-

10 Whether it is within the power of the Government to requisition premisesxmerely for the purpose of giving accommodation to persons whose own property has been requisitioned by Government.

No I do not seexhow if shch requisition is made avowedly for giving accommodation to persons whose own properties have been requisitioned by the Government,it can be said that such requisition is for the efficient prosecution of the war.

A similar question arise in connection with the requisitioning of appliances or other moveables. Government is arranging for the requisitioning of a Hospital in Bombay. The Hospital Authorities are making arrangements to shift to another place but they desire to shift into a building in which there is an operation theatre properly equipped. The Government Official has found an operation theatre in a building owned by one Mr.Dubash and has shown this to the Hospital Authorities. Although the buildings belongs to Mr. Dubash the operating equipment belongs to another party who was contemplating opening a Nursing Home in Mr.Debash's building. He has not however signed the formal agreement with Mr.Dubash he orginally intended to doand there is some difference between the landlord and this prospective tenant. Government therefore consider it advisable to requisition the instruments and equimpent belonging to the proppective lessee of Mr.Dubash, so that they could be made available from the Hospital Authorities. The equipment at the Hospital premises willbe alsorequisitioned and will be available for Government. This procedure will avoid Government requisitioning the equipment at the Nursing Home and transferring it to the Hospital premises which would mean that the equipment that the equipment at the Hospital premises would also have to be shifted to the new premises occupied by the Hospital. The ~~que~~ question arises whether Government is competent to requisition the equipment at the Hospital premises as also the equipment is respect of the Nursing Home, the letter being requisitioned only for the purpose of placing the same at the disposal of the Hospital Authorities. Counsel is therefore requested to advise:-

11. Whether it is within the power of Government to requistion the Nursihg Home equipment merely for the purpose of placing the same at the disposal of the Hospital Authorities.

No. Government may,howver, decide to requistion the equipment of the Hospital Authorities by giving such Hospital Authorities other equipment inexchange for the equipment so requistioned and for that purpose Government would be entitled to requisition the equipment of the Nursing Home.

12. In a similar event as in Question 11,could Government requistion the equipment in Mr.Dubash's building and remove the same to the Hospital in which case the ~~Hos~~ Hospital would take away their own equipment from their existing Hospital to ~~Mr. Dubashs~~ Debash's building?

See the answer to Query 11.

A further question which arises is regarding the area of the land desired to be requisticned by Government. It often happens in the suburbs that a person is entitld to a very large piece of land admeasuring several acres.

P.T.O.

Government does not desire to requistion the whole land but only wants to requistion the bungalow and the surrounding land admeasuresx the times the area of the plinth of the bungalow. The owner,howver, sometimes insists that the entire area should be taken over by the Government as the land used for agricultural and orchard purposes and they could not be so used if the bungalow was not left to the owner. Of course there will be nothing wrong under the Act to requistion only a part of the premises owned by a particular owner but it would seemthat he would claim a larger compensation basied on the fact that the area which is not requistioned would not be of much use to him. Could such a claim on the part of the owner lie? Counsel is therefore requested to advise:-

13. In case a part of the peoperty of a persons is requistioned which part contains the buildings on the land,would the owner be untitled to compensation in respect of the part which is not requistioned, and if so, on what basis ?

The owner will be entitled to compensation, if he can bring his care withinthe 3rd or 4th provision in section 23(1).

Another question which arise by reason of the requistiionid is this: One claiment maintains that Government is bound to pay over and above the compensation for the requistion fifteen per cent of the amount mentioned in section 23 of the Land Acquisition Act. I think that the claim is clearly untenable. In the first instance the fifteen per cent on the market value is mentioned in sub-section (2) of section 23 and not sub-section (1) of section 23. sub-section(1)is the only sub-section which is mentioned in Defence of India Act,secondly, the wording of the Defence of India Act suggests that the arbitrator in making his award should have regard to the provisions of section 23(1)so far as the same can be made applicable. If therefore seems to me that section 23(1)is to form a sort of a guide in assessing compensation which is to be paid for the property which is requisitioned by this section of the Defence of India Act would not have the effect of bodily embodying all the provisions of section23 into section 19of the Defence of India Act, Counsel is therefore requested to advise:-

14. Whether the Goverment are bound to bay over and above the amount of compensation a sum equivalent to fifteen percent on the amount of compensation?

M.RD

Office of the R.L.A.

It appears that the Military Authorities took possession of the flats in "Mayfa on 25th February 1942 and at their instance the Collector has issued a requisition order on 24th April 1942, with effect fro from 25th February 1942 i.e. mentioning 25th Febrpary 1942 as the date of requisition. The question for the consideration of the R.L.A. is whether the oder of requ requisition with retrospextive effect is in order and if nit, whether the the Collector should be asked to issue a fresh order with effect from 24th April 1942.

2. The provisions contained in old rules 76 and 79 under which the Collector acted in the present case and which are now replaced by rule 75A, read with the defini tion of the expression "requisition" in rule 2(11) of the Defence of India Rules clearly contemplate the issuing of a re quisition order prospectively and not retro-spectively. The order of requisition issued by the Collector on 24th April 1942 with effect from 25th February 1942 would not therefore be lawful. Being not an order in exercise of power vested in the Collect or under rules 76 and 79 it is likely to be called in question in a civil court under section 16 in so far as it relates to the possession of the premises between 25 25th February 1942 and 24th April 1942. It would, therefore, be desirable be desirable that Government should amicably settle the dispute with the land-lord about compensation payable for the period from 25th February 1942 to 24th April 1942. The requisition orde issued by the Collector would be effective from the

from the date of its issue i.e. 24th April 1942 and it is not necessary to issue a fresh order.

Sd/- P.N.M.
28/5

Remembrancer of Legal Affairs.

U.R. to R.D. No.4421,dated the 29th May 1942.

M.R.D.
1//5ø 56

Office of the R.L.A.

On an inquiry made by the Cole Controller of Supplies (Government of India) Bombay, on 25th Februar 1942, the Crown Coal Company, Poona, submitted a tende on 2nd March 1942 for the supply of charcoal. The tender was accepted by the Controller of Supplies and on 10th March 1942 the Crown Coal Company was informed that the quantity "should be held up and that dispatching instructions were expectedfor them." It appears that the actual instructions were received by the Company on 7th April 1942 to supply charcoal according to the tender to the Chief Ordinance Officer, Dehu Siding on or before 10th April 1942. In the meantime, however the District Magistrate and Controller of Prices, poona in exercise of the powers conferred by clauses(a), (b) and (f)of rule 81(2) of the Defence of India Rules read with H.D. (Politi@al)-War Notification No.S.D./W-3401 dated the19th December 1941 issued an Order No.P.C/C/1 dated the 2nd April 1942 directing that charcoal shall not be sold at any place in the Poona City and Suburban and the Poona and Kirkee Cantonment areas at a price higher than the prices fixed. The question for the R.L.A.'s consideration is whether in view of the said Order of the Districtx Magistrate and Controller of Prices, Poona, fixing the prices of charcoal, it is legal for the Crown Coal Company, Poona, to supply charcoal to the Controller of Supplies at the tendered rate which appears to be higher than that fixed by the District Magistrate and Controller of Prices, Poona.

2. A tender is in the nature of a standing or conti

or continuing offer. In the present case the tender for supply of charcoal was subitted by the Crown Coal Company, Poona, to the Controller of supplies on 2nd March 1942. This tender was accepted. The date of acceptance is not stated but it was before that date of the above Notification. Thus a contract of sale of goods was concluded between the Crown Coal Company and the Controller of Supplies within the meaning of section 4(1)of the Indian Sale of Goods Act, 1930. Sub-section(1)of section 19of the Act provides that where there is a contract for the sale of specified or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Under sub-section (2),for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the coudnct of the parties and the circumstances of the case. Under sub-section(3),unless a different intentior appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 20 provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. In the present case, the proprietor, Crown Coal and Company, Poona, states thus in his letter dated the 8th of April:-

"We are infromed by the Controller by his letter dated the 10th March 1942 that the quantity should be held up. The words "quantity should be held up" imply that the property

imply that the property in the coal had passed to the Controller of Supplies but the delivery of the goods was postponed till further instructions(cf.A.I.R. 1922 All.458 and 7 Lah.406). The Order issued by the District Magistrate and Controller of prices, Poona, on 2nd April 1942 fixes the sale price of the charcoal and provides that with effect from that date it shall not be sold at a price higher than that fixed<u>at any place in the Poona City etc.</u> Further since the offer appears to have been accepted at Bombay, the the contract would be deemed to have been made there and it is doubtful whether the coal could be said to have been sold within the limits to which the above Notification applies. Consequently there appears no legal objection to the Crown Coal Company charging the Controller of Supplies at the rate accepted by him.

Sd/- P.N.M
29/5

Remembrancer of the Legal Affairs.

M.R.D.
1/5/66

U.R. to G.D.,No.4458 ,dated the30th May 1942.

Office of the R.L.A.

The R.L.A. has been requested to deal with the questions raised in the Municipal Commissioner's D.O.No 595dated the 11th May 1942. The first question is why the R.L.A. has in one case stated that it would not be legally feasible to apply for modification of the scheme and in another case has advised the Managing Committee to apply for modification. In the first case the proposal was to run an emergency hospital. That was not one of the objects of the Trust and therefore the Committee was advised not to apply. In the second case the proposal was to transfer the beggars to Kairs and maintain them there. The care of beggars was one of the objects of the Trust. That was one of the duties duties imposed upon the Trustees. They were to execute it in a particular way. One condition was that the beggars should be cared for at Bombay. Circumstances have rendered that condition incapable of fulfilment. But there would seem to be no objection to modifying the scheme so as to permit the maintenance of the beggars at Kairs. That would be a change not in the the duties imposed by the Trust deed, but of the manner of executing those duties. Courts are naturally more ready to permit changes in the manner of executing Trust Trust duties and objects, than changes in the duties or objects themselves. Hence the reason why the R.L.A. advised an application for modification in one case and not in the other. It is hoped that the above distinction between changes in duties and changes in the manner of executing those duties will afford sufficient

~~will afford sufficient~~ guidance tothe Managing Committee in framing an application for modification of thex scheme.

2. Regarding the R.L.A.'s statement that the Committee is no longer competent to conduct the scheme according to the terms of the scheme, the word 'competent' appears to have caused some confusion. The R.L.A. merely meant that the Committeex since it had lost possession of the Trust Buildings, was no longer properly qualified to carry out the scheme. It was not intended to suggest that such acts of trusteeship as Government, the requisitioning authority, permitted the committee to perform, were illegal. If such acts were in in accordance with the scheme they would be legal and expenditure on them would also be legal. There is no legal objection to the Committee carrying out the provisions of the scheme so far as is possible under the circumstances and incuring expenditure for that purpose.

3. If the Committee is using the Home for the care of destitutes, one of the objects of the Trust, there would appear to be no objection to the Committee's providing protection against air-raids.

Sd/- P.N.M.
6/6

Remembrancer of the Legal Affairs.

U.R. to H.D. (Spl.) A.R.P. (E) No.240-confl dated 8th June 1942.

M.R.D
1/5/56

No. 4725

Legal Department.

Bombay Castle, 8th June 1942.

Dear Jinkin,

With reference to your query on the telephone on the 6th instant, it seems to me that the word 'Occupier' in Rule 51-A of the Defence of India Rules means an owner, tenant or sub-tenant in possession of the premises and would not include a wife or a person sharing a flat with another responsible for the rent.

Yours

Sd/-

To

M. Jinkin, Esquire, I.C.S.,
Addl. Under Secretary to Government,
Home Department (Special)-A.R.P.

M.R.D.
5/566

Office of the R.L.A.

By Government Order, Political and Services Department, No.W.196,dated 22nd August 1940,issued in exercise of the powers conferred by sub-rule (1)of rule 116 of the Defence of India Rules, the Government of Bombay directed all persons resident in the province who on or before 31st December 1932 were of German or Italian nationality and thereafter acquired British or other nationality either by marriage or naturalisation, to furnish within ten days of the date of the Order the information on the points specified therein. The question for the consideration of the R.L.A. is whether the Order applied only to those persons who were residing in the Province on the date of the issue of the Order.

2. The order was directed to those who were resident in the Province of Bombay and required them to furnish the speficied information within tendays of the date thereof. The limit of the the period of ten days of the date of the Order shows that it could not be complied with by those who arrived in the Province after ten days of the date of the issue of the Order. The Order in question will therefore have to be held to be directed to those persons of German or Italian nationality who had acquired a different nationality and who were residing in this Province on 20th August 1940, the date on which the Order was issued. If it is intended to collect similar infromation in regard to such persons arriving in the Province after that date or arriving hereafter, a fresh order will have to be issued.

Sd/- 16/6

P.T.OP

Remembrancer of Legal Affairs.

U.R. to P.&.S.D., No.-248-Confl., dated the 16th June 1942.

M.R.D
1/5/56

This appears to be a futile reference as there can be little room for doubt that the Bombay Rent Restriction Order 1942 could not and was never intended to apply to hotels and lodging houses. That is manifest from another Order called the Hotels and Lodging Houses Control Order, 1942 issued by the General Department on 16th May 1942, to which curiously enough the General Department makes no reference(copy annexed).

2. The Bombay Rent Restriction Order has definitely been confined to premises let for the purpose of residence only. "Residence" has a variety of meanings, according to the statute in which it is used and its sense would have to be gathered from the context.(See Wharton's Law Lexicion,page 1119). But having regard to the scheme of the Bombay Rent Restriction Order I hardly think it can be given so wide a meaning as to include hotels, lodging houses and institutions like sanatoria and nursing homes. The term "landlord" has been defined in clause3(2)of the Rent Restriction Order to mean any person for the time being entitled to receive rent in respect of any premises and includes a tenant who sub-lets any premises. The word "tenant" has been defined in clause 3(5) as meaning any person by whom rent is payable for any premises, and includes every person from time to time deriving title under a tenant. "Rent" has not been defined; but "standard rent" has been defined in clause 3(4)as meaning the rent at which the premises were let on certain prescribed dates. It is thus clear from these definitions that the

definitions that the Bombay Rent Restriction Order is confined strictly to residejtial premises where the relations between the parties are those of a 'landlord'and 'tanant', Now the proprietor of a hotel or a boarding house rents a building from the owner not for the purpose of residence, but for the business purpose of running it as a hotel or a boarding house. The relations between the owner of a building and the pro=p • prietor would undoubtedly be those of a 'landlord'and 'tenant', but, so far as the proirietor is concerned, he obviously cannot receive any benefits under the Bombay Rent Restriction Order on account of his having rented the building for business purposes. The matter however does not rest there. The pro-priietor would himself be a 'landlord' within the meaning of the term as defined in clause3(2)if as tenant of the building he sublets part of it to sub-tenants~~within the meaning~~ for the purpose of residence. The sub-tenant would then be entitled to receive the benefits under the Rent Restriction Order. But the question is whether a lodger can be regarded as a sub-tenant within the meaning of clause3(5). ~~I think of~~ which another has the general possession and capacity "(Wharton's Law Lexicon,page 751). The proprietor does not really sub-let the premises to a lodger. What he does is to charge the lodger for accomodation supplied. The charges may be either inclusive ~~on~~ or exclusive of board. But these charges can by on stretch of imagination be regarded as 'rent'as commonly understood, and the relations between the proprietor and the ~~loger~~ lodger can hardly be deemed to be those of 'landlord' and 'tenant'.

I think not. "A lodger is one who temporarily in habits a portion of a house of which another

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U.R. to G.D.,No 4596 , dated the 4th June 1942

M.R
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Office of the R.L.A.

The facts are stated by the Commissioner of Labour in his note dated 17th June 1942. The question for the consideration of theeR.L.A. is whether amended rule 81 81-A of the Defence of India Rules could, in those circumstances have retrospective effect.

2. Rule 3(1)of the Defence of India Rules provides that the General Clauses Act, 1897, shall apply to the interpretation of these rules as it applies to the interpretation of a Central Act. Section 24 of the General Clauses Act provides for the continuation of orders, notifications etc.made or issued under enactments repealed and re-enacted. That section further provides that orders etc. made under the repealed provisions ~~will~~ shall be deemed to have been made under the re-enacted provisions so far as it is not inconsistent with these provisions. In this case the Defence of India Rules have not been repealed and re-enacted in toto. It is only rule 81-A that has in effect been repealed and re-enacted by the substitution of new sub-rulesfor some of the old. Section 24 therefore does not in terms cover the present case. But in essence so far as the continuance of orders is concerned, there seems no difference between on the one hand repealing and re-enacting the whole body of rules and on the other hand repealing and re-enacting particular rules by means of amendments. There is no express provision in the amendment of rule 81-A that former orders should not be continued and there appears no reason to infer such a provision. The order for adj-

~~ection~~

admudication may therefore be regarded as continuing and as having been made under rule 81-Aas it now stands. Further the fact that in the order for adjudication there was no express provision for enforcing the award can hardly have affected the rights of either of the parties or the course of the adjudication proceedings. It does not seem likely that because of that absence either party has acquired any right or privilege. Indeed it is quite possible that under the rule as it stood before the amendment, Government did possess the power to enforce the award. One of the ~~cheif~~ chief purposes of the amendment was merely to make that quite clear. There seems therfore no legal objection to Government at this stage adding to itsformer order for adjudication by making provision for enforcing the award. Such a power would seem in the case of orders under the Defence of India Rules to be expressly given to Government by section 21 of the General Clauses Act read with rule 3(1) of the Defence of India Rules. On this view of the matter it is unnecessary to go so far as to say that the amended rule 81-Acan be considered to have retrospective effect. Similarly the proposed order for enforcing the award should purport to have effect from the date of its passing and not from the date of the former order for adjudication.

3. Attention is alsoinvited to section16 of the Defence of India Act. That section provides that no order made under the Act shall be called in question in any court. No doubt courts would consider whether they could deal with orders that wereprovied to be ultra vires. But even if courts could consider that question , it would seem to be difficult to show that the proposedorder for enforcing the award is

ultra vires. The order will be made in virtue of the power which Government possesses at the time it makes the order. The fact that the order is made to enforce an award made in accordance with an order passe under the old rule would hardly make the proposed and order ultra vires.

Sd/- P.N.M.
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M.R.D.
1/8/56

U.R. to P.& S.Deptt., No 5330, dated the 30th June 1942.

R.I.NO. 5617.
29-6-1942.

Submitted.

2. Mr.Budhrani, Asst. A.R.P. Controller (schools)has prepared a draft A.R.P. scheme for schools and the proposal is to issue the scheme to all the schools for adoption. In this connection the question for consideration of Government is whether the A.R.P. scheme containing the instructions to heads of schools should issue in the form of an order under the Defence of India Rules or as an administrative order of Government with an implied threat of a cut in Schools' grants or withdrawal of recognition if it was not complied with, or merely as advice. The Secy.,H. D.(A.R.P.) in his note dated 10th June 1942 considers that the best way would be to issue an order under Rule 51-K of the Defence of India Rules.

A.S. Reply may be:-

Papers are seen and returned. An order under rule 51-K of the Defence of India Rules would be appropriate.

Sd/-
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A.L.R. Sd/-
30/6

R.L.A. Sd/- P.N.M.
30/6

M.R.D.
1/5/56

U.R. to H.D.(Poll.)ARP-B,No.5408 dated 2nd July 1042-

Office of the R.L.A.

Thex questions referred to the R.L.A. for consideration are:-

(1) Whether the liability to pay(a)the municipaltaxes, (b)the urban immoveable property tax, (c)the ground-rent and (d)the land revenue, in respect of a private property temporarily requisitioned under the Defence of India Rules, rests on the owner of the property or the requisitioning authority i.e. Government.

(2) Whether in respect of lands leased by Government to private parties who have erected buildings thereon, the parties ~~who have erected bui~~ are liable to pay ground rent to Government after the buildings are requisitioned.

The R.D. in para.1 of its note has expressed the view that when property is requisitioned under rule 75-A of the Defence of India Rules the Central Govdrnment obtains exclusive possession of the property and the property is therefore exempt from all taxes imposed by or by any authority within, the province, in accordance with section 154 of the Government of India Act, 1935 and no municipal rate or tax, or ~~urubanurban~~ immoveable property tax or any provincial assessment is payable in respect of the requisitioned property.

The view taken by the R.D.does not appear to be correct. When land is requisitioned by Government under rule 75- A of the Defence of India Rules, the land does not vest absolutely in Government. It is only when the property is acquired under clause(2)of rule 75-A that it vests absolutely in Government. When the property is ~~merely~~ merely requisitioned the owner still remains the owner (~~see para.1 of~~

(see para.1 of K.L.A.'s opinion No.3893 dated 9-5-1942

Section 154 of the Government of India Act, 1935 inter alia provides that property vested in His Majesty for pruposes of the Government of the Federation shall, save in so far as the Federal law may otherwise provid be exempt from all taxes imposed by or by any authorit within a Province or Federal State. The expression "vested in in His Majesty" in this section must be interpreted in its legal sence. To "vest" generally means to give property in. It is a word which has acquired a definite meaning, carrying with it definite legal consequences. In its strict legal sense, it means vest in interest and not in possession (see Stroud 's Judicial Dictionary,2nd Edn.). 61 Cal.119 has also interpreted the term "vesting" as implying property in the subject matter. Requisitioning of property merely means taking immediate possession of property for certain pruposes. It does not divest the owner of any of his inherent rights, nor does it clothe Government with any right of ownership. It merely suspends, during the period of requistion, some of the owner's rights e.g. the right to let the property. In the circumstances, it hardly seems that requisitioning of property by Government implies in a strict legal sence that the requistioned property vests in Governmen It would therefore appear that section 154 of the Constitution Act can have no application to property requisitioned under the Defence of India Rules. Consequently the taxes on the property requisitioned with will still have tobe paid.

There is then the question who is to pay the various taxes. First the Municipal taxes. Section 146 of the City of Bombay Municipal Act, 1888m imposes libility for property taxs. Sub-section (2)of that section is relevant for the present leviable— case as follows, Namely:-

> (a)if the premises are let,from the lessor;
> (b)if the premises are sub-let, from the superior lessor;and
> (c) if the premises are unlet, from the person in whom the right to let the same vest."

As already explained in opinion No.3893 dated 9th May 1942 the relation between the owner and the requisitioning authority is not that of landlord and tenant and the property requisitioned cannot be said to be let. Clause(a)and consequently clause (b) of sub-section (2)would not therefore seem to apply. If the premises are unlet the liability falls on the person in whom the right to let vests. The owner would have the right to let the property with effect from the termination of the period of requistion,although, if Government took the further step of acquiring the property, the agreement would be null and void. Certainly the owner cannot let the property with effect during the period of requisition. But has the requisitioning authority the power to let the requisitioned property? It is conceivable that Government might requisition a building for its own war pruposes and later allow the military autheritiea to use the building for their war purposes subject to certain payments. But it does not seem that that could reasonably be called letting the building, to the military autheritiea. Government has no doubt wide powers over the property requisitioned; but it does not seem that it can be said that the right to let vests in Government .

The process of requisitioning that is authorised by section 78-A of the Defence of India Rules creates an e extraordinary relation between the owner and the requisitioning authority and makes it difficult logically to fit either into the clauses of sub-section (2)of sectio 146 of the above.Act. But reasonably enough the Municipality would demand that someone pay the taxes, whatever be the legiv l difficulty. It would seem that the proper person in the circumstances to pay the taxs would be the owner. He would seem to be primarily liable, no matter that hisproperty is in the temporary possession of Government. It is presumed that at present little difficulty will arise. If an owner refuse to pay,Government itself may pay and take that into consideration when finally determining the amount of compensation. At that time the owner also will have an opportunity of making any representation he thinks fit regarding liability for taxes.

Next there is the Urban Immoveable property tax. Section 26(2)(c) of the Bombay Finance Act, 1932 imposes the liability for this tax. The wording of sub-section (2)of that section is the same as sub-section(2)of section 146 of the City of Bombay Municipal Act. The abov above considerations would apply equally well to this tax, for which the owner would seem in the circumstance to be liable.

Then there is the ground rent in respect of requisitioned land ordinarily due to Government, or to the Bombay Improvement Trust, or to the Bombay Port Trust,

Bombay Port Trust. In respect of land leased by Government or the Bombay Improvement Trust or the Bombay Port Trust, rent is payable by the lessee according to the terms of the lease, and it is not possible to give a definite opinion on this point without first perusing the lease.

Finally there is the land revenue or assessment. Section 10 of the Bombay City Land Revenue Act,1876, provides that the superior holder or in his absence, the person actually in possession shall be liable in person and property for the land revenue due upon the holding. 'Superior holder'is defined in section 3(4)of the said Act to mean the person having the highest title under the provincial Government to any land in the City of Bombay. It would seem in the circumstances of requisition that the landlord has a higher title than the requisitioning authority and is liable for the payment of land revenue.

There remains the question of lands leased by Government to private parties. Without seeing the leases, it is impossible to give a definite answer to this question. Since the lessor and the compensating authority for requisition are one and the same, it is presumed that meantime there will be little difficulty in deciding how the rent is to enter into the calculation of compensation.

Sd/-P.N.M.
19/6
Remembrancer of Legal Affairs.

U.R. to R.D.,No.5024,dated 19th June 1942.

M.R.D
1/5/56

Office of the R.L.A

The information given tothe Price Controller as desired in the draft Press Note at Page 7 ante woul be on the same footing as the information given to a Police Officer who can refuse to divulge the source of information under section 125 of the Indian Evidence A If the intention is to enable the Price Controller to collect fresh evidence and to lunch a prosecution on f facts indepedent of the information given to him, then' of the Press Note would not be objectionable. If however the information given to to the Price Controller is intended to be acted upon and used for prosecuting the offending shopkeeper, the informant will necessari have to be examined as a witness, in which case it would not be legally proper to give an assurance on th lines of "A"

Sd/- P.N.M.

Remembrancer of Legal Affairs.

M.R.D.
1/8/56

U.R. to A&F) No.5624, dated 10th July 1942.

OFFICE OF THE R.L.A.

The question for the R.L.A.'s consideration is whether the exhibition of a price on a hawker s barrel or in a shop in accordance with the kerosene oil Order dated 8th July 1942 legally constitutes a liability that stocks are available at that price.

The kerosene oil Order does not directly prescribe that the price of the kerosene be exhibited. It provides for the exhibition of a copy of the whole Order and in sub-clause(a)of that Order the pricesare prescribed. Such a communication of the price to the public is different from the exhibition of the price card or board in that it does not give an assurance that supplies of the article are available for sale. Further the exhibition of the copy of the Order is not voluntary but is prescribed by statutory order. In the circumstances it would be unreasonable to hold that such an exhibition amounted to a gurantee that supplies were available for sale. Therefore, even assuming for themoment that the voluntary exhibition of price on a board amounted to sucha gurantee and that the shopkeeper incurred a liability by a failure to supply, still the prescribed exhibition of a copy of this Order could be effectively distinguished from shch an exhibition. Provided the shopkeeper or hawker had no oil to sell the exhibition of the Order would not invole him in any liability.

Sd/-P.N.M.
12/7

Remembrancer of Legal Affairs.

U.R. to G.D.,No,5684,dated the 13th July 1942.

Revenue Department.
Bombay Castle, 10th July 1942.

From

M.J.Desai, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Revenue Department.

To

The Municipal Commissioner for the City of Bombay

Subject:- Land and Buildings:
Requisitioning of -under Defen
Defence of India Rules.
Question regarding repairs to
buildings.

Sir,

With reference to your memorandum, No.S.R./1011, dated 28th April 1942, I am directed to state that the authority on whose behalf a building is requisitioned under the Defence of India Rules obtains the right of possession and use while the order of requisitioning is in force; and the owner of a building should have no concern with it so long as it continues to be requisitioned.

Your obedient servant.

F.H.Devitre,

For Secretary to the Government of Bom
bay Revenue Department.

Copies forwarded to:-

The Commissioners of Divisions,

all Collectors,

the collector of Bombay (Land Revenue Department

The Home Department (Political)war

the Remembrancer of Legal Affairs.

Substituted by G.M.R.D. No.5883/R39.dated 23rdNov.1942)

M.R.D.
/5/56

Sub.No.7066
A 15/7/42

Office of the R.L.A.

STATMENT OF THE CASE.

Thequestions for consideration are raised by R.L.A.'s opinion No.5024 dated 19th June 1942,hereinafter called the opinion under consideration. The firs question is whether property requisitioned under rule 7 75-A of the Defence of India Rules vests in Government for the purposes of the section 154 of the Government of India Act.1935. The other questions are regarding the manner in which certain taxes on property are affected by requisitioning under rule 75A. The Revenue Department has requested that the Advocate General 's advice be sought on those points.

2. In R.L.A.'s opinion No.125.P.-Confidential dated 24th September 1940it was held that land requisitioned under rule 80(1) of the Defence of India Rules vests for the time being in Government and therefore under section154 of the Government of India Act, it is not liable for the payment of anyassessment,whether agricultural or n non-agricultural under the Bombay Land Revenue Code. In R.L.A.'s opinion No.5200 dated 9th June 1941 the above opinion was confirmed. Again the opinion was confined to rule 80(1). Apparently on the basis of those two opinions Government in Resolution, Revenue Department,No.6452/39 dated 14th November 1941 issued the following instruction regarding the levy of assessment on lands requisitioned:-

> "When land is requisitioned under rule 79or 80 of the Defence of India Rules, the Central Government obtains exclusive possession of the land by the exercise of the powers conferred by statute. The land then vests in that Government for the time being and is therefore exempt from

exempt from liability to payment of land revenue under section 154of the Government of India Act,1935. The question of levying any assessment does not arise.".

It maybe noted that this resolution dealt also with land requisitioned under rule 79,although that rule is not mentioned in the above two opinons of the R.L.A. Finally in the opinion under consideration, the R.L.A. expressed the view that property requistioned under rule 75A does not in the strict legal sense of the word vest in Government and consequently section154 of the Government of India Act could have no application, and the taxes on requisitioned property would still have to be paid. The Revenue Department finds it difficultxto reconcile the R.L.A.'s for -mer two opinions ~~with~~ with the opinion now under considerationx and thinks that if the present opinion is accepted, the ~~the~~ orders,in the above Government resolution will have to be revised. In ~~view~~ view of that and also because of the far-reaching effects of the R.L.A.'s presentopinion, the Advocate General's advice is sought.

3. The R.L.A.'s opinion No.125-Confidential dated 24th September 1940was given in respect of land requisitioned under rule 80(1)of the Defence of India Rules. The question regarding propertyrequisitioned under rule 79,now rule 75A,was not considered then. Similarly,R.L.A.'s opinion No.5200dated 9th June 1941 was confined to land requisitioned under rule 80(1). It was held in that opinion that in view of the provisions of clause(b)of that rule, it would be possible for Government to prohibit the exercise of all rights by any other person in respect the requisitioned land. It may be noted that in rule 80(1)the term "requisitioned "is not used. That section provides for Government"authorisingx the use of ~~property fo~~

property for military purposes. A distinction can there fore be made between lands whose use in authorised under rule 80(1)and property requisitioned under rule 75A. Further in sub-rule (3)of rule 75A it is stated in so many words that from the date of service of notice of acquisition the property will vest in Government. That implies that in the earlier stage,viz,the stage of requisition, the property does not vest in Government. It is emphasised that the R.L.A.'s present opinion is confined to requisitioning under rule 75A. The question is whether by reason of such requisitioning the property vests in Government for the purposes of section 154 of the Government of India Act.

4. Assuming that the property does not so vest in Government, it will still remain liable for taxes and the question arises who is to pay these taxes after the property is requisitioned. Thereare first the municipal taxes. The R.L.A. has expressed the opinion that the owner of the property would be liable for payment. The reasons for that view are given in the opinion under consideration. Similarly, regarding the Urban Immoveable property tax, the R.L.A. has held that the owner is liable. Then in the case of ground rent ordinarily due to Government or the Bombay Improvement Trust or the Bombay Prot Trust, the R.L.A. has held that without persuing the particular leases, it is impossible to say how requisitioning would affect the liability. Similarly regarding lands leased by Government to private parties. Regarding land revenue payable under the

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~~Bombay City~~

Bombay City Land Revenue Act, the R.L.A. has held that the landlord is liable. The reasons for these view are given in the opinion under consideration.

5. The Advocate General is requested to favour Revenue Department with his views on the above questions and the matter may kindly be treated as urgent.

Sd/- P.N.M.
Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay,, No. 5733,

Dated the 14th July 1942.

M.R.D.
1/5/56

Proerty requisitioned under Rule 75 A of the Defence of India Rules does not vest in Government for the purposes of section 154 of the Government of India Act,1935.

2. Rule 75A deals with two sets of events. The first event which is the requisitioning of the property is dealt with in sub clause(1). Sub clause(2)deals with what may happen after the property has been requisitioned under sub clause(1). The Government may not go further and may merely use the property requisitioned. Or, it may take the further step of acquiring the property by publishing the notice mentioned in the sub clause. If the Government do decide on this further step of acquisition and serve the notice as provided, the property becomes vested in Government at the beginning of the day on which the notice is served. This is the effect of sub clause (3). Sub clause(4)deals separately with the two events above mentioned, viz: requisition or acquisition. In either case the owner is to be paid compensation.

3. The Rule, therefore, clearly draws a distinction between requisitioning and acquisition. It also clearly provides that the property will vest in Government only if and when a notice of acquisition is served. If the property is requisitioned and remains requisitioned without being acquired, it will remain vested in the owner.

4. Rule 2 sub clause(11)of the Defence of India Rules defines the word "requisition". Under that definition "requisition"means takingpossession of the property"

or "requiring it"to be placed at the disposal of the requisitioning authority". It is clear in law that the taking possession of a property or having the property at the disposal of a person will not result in the property being vested in that person. Vesting implies not merely possession or control but a proprietory right. See 61Cal.119at P.124;and, 13 Q.B.D. 904 at p 911.

5. I,therefore, agree with the view of the R.L.A. that lan requisitioned by Government under Rule 75A of the Defence of India Rules doesnot vest in Government for the purposes of section 154 of the Government of India Act.

6. In regard to the persons liable to pay the various taxes in respect of the property requisitioned, I agree with the views expressed by the R.L.A. in his Opinion dated the 19th of June 1942.

Sd/-

Advocate General.

16/7/42.

M.R.D
1/5/64

Office of the R.L.A.

A copy of the Advocate General's opinion dated 16th July 1942 along with a copy of the statement of the case is herewith forwarded to the Revenue Department.

Sd/-P.N.M.
17/7

Remembrancer of Legal Affairs.

M.R.D.
1/8/56

U.R.to R.D.,No5818,dated the 17th July 1942.

Office of the R.L.A.

The questions raised for the R.L.A.'s consideration are these:-

(1) Whether in view of the H.D.(Political)War, Notification No.S.D./W.3401,dated 19-12-1941 issued by the Government of Bombay under section 2(5)of the Defence of India Act, 1939, delegating the exercise of powers and discharge of duties of the Provincial Government under certain rules of the Defence of India Rules to the District Magistrates, the Districts are legally competent to issue licenses under section 3 of the Foodgrains Control Order,1942; and

(2) If not,whether it would be necessary for the Government of Bombay to approach the Central Government for delegation of the powers of the Provincial Government to District Magistrates under section 3 of the Foodgrains Control Order, 1942,or whether the delegation can be done in some other way.

2. Sub-section(1)of section 2 of the Defence of India Act,19 provides for the power of the Central Government to make rules. Under sub-section(2)the rules may provide foreg or may empower any authority to make orders providing forcall or any of the matters specified in clause (1)to (xxxv) thereunder. Sub-section (5)provides that a Provincial Government may by order direct th any power or duty which by rule made under sub-section(1) is conferred or imposes upon the provincial Government or which being by such rule conferred or imposed on the Central Government has been directed under sub-section(4)to be exercised or discharged by the Provincial Government shall in such circumstances and under such conditions, if any,as may be specified in the direction be exercised or discharged by any officer or authority no being (except in the case of a Chief Commissioner's province) officer or authority subordinate to the Central Government. section(4)lays down that the Central Government may by order direct that any power or duty which by rule under sub-section is conferred or imposed upon the central Government shall in circumstances and under such conditions, if any, as may be sp fied in the direction be exercised or discharged--

(a) By any Provincial Government
(b)

or by any officer or authority ~~suberity~~ subordinate to such Government. The Foodgrains Control Order, 1942, has been passed by the Central Government in exercise of power vested under sub-rule(2)of rule 81of the Defence of India Rules and a contravention of this Order would be a contravention of sub-rule (2)of rule 81(see sub-rule(4)of rule 81). Consequently the power to issue a license conferred on the Provincial Government under section 3 of the Foodgrains Control Order would be a power conferred on the Central Government by virtue of rule 81(2)made under sub-section (4)of section 2 but directed to be exercised by the Provincial Government in accordance with sub-section(4)of section 2 or theDefence of India Act. And by an order dated 19-12-1941 issued ~~of the Defence of India Act.--And~~ in exercise of the powers vested under sub-section(5)of section 2 the Government of Bombay has directed that allpowers or duties conferred or imposed on it by rule 81 should be exercised or dischargedx by all District Magistrates within the limits of their respective jurisdiction,Consequently it would be competent for District for District Magistrates to exercise powers vested in Governmeno under section 3 or the Foodgrains Control Order, 1942. No reference to the Central Government for delegation of the power to District Magistrates would be necessary.

Sd/-P.N.M.
18/7/-
Remembrancer or Legal Affairs.

U.R. to G.D.No.5873 ,dated the 28thx July 1942.

M.R.D.
1/5/56

Office of the R.L.A.

The Municipal City Engineer proposes to lower a hump in Parel Tank Road in Order tomobtain rubble for the erection of blast walls. To lower the hump it would be necessary to build a diversion road through private lands. H.D. (Spl.) A.R.P. thinks the private lands could be requisitioned and acquired under Rule 75(A) of the Defence of India Rules. The R.L.A. is asked to advise whether this view is correct.

2. If Government is of opinion that the requisitioning or acquisition of the lands is necessary or expendient for public safety then it is entitled under Rule 75A to requisition or acquired them. No doubt the erection of blast walls is necessary of ~~exple~~ expendient for public safety against hostile air attacks but it is not clear whether sufficient rubble for the purpose cannot be obtained from other sources. The link between public safety and the requisitioning of the lands for a diversion road seems rather long and tenuous. It is necessary to close the Parel Tank Road completely to lower the hump? ~~Is it [illegible]~~ Is it not possible to use existing roads for the diversion even it means a longer and circuitous diversion? However it is not for the Department to decide whether the requisitioning is really necessary or expedient for public safety. Provided Government has grounds for its opinion that it is necessary or expedient to requisition or acquire the lands there is no legal objection to its doing so.

Sd/-P.N.M.

Remembrancer of Legal Affairs.

U. R. to H. D. (Spl) A.R.P. No. 5898 , dated the 20th July, 42.

M.R.D.
2/5/56

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether there is any legal objection to Government(s requisitioning for use of as a Government cheap grain shop any suitable shop, the owner of which has been convicted of an offence under the Defence of India Act,for example, of overcharging.

2. Rule 75-A of the Defence of India Rules provides that-

> "If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety,the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community,that Government may by order in writing requisition any property movable or immoveable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning."

What supplies are essential to the life of the community is largely a question of fact for the Administrative Department to decide. However, however, an "essential commodity" has been defined in rule 34(3)as meaning food, water,fuel,light,power, or any other thing essential for the existenceof the community which is notified in this behalf by Government. Even apartfrom that rule it is clear that foodstuffs such as grain are essential commodities. Whether the requisitioning of shop premises is necessary or expedient for maintaining essential supplies of commodites is also largely a question of fact for the Administrative Department to decide,But it should seem that in order to ensure an adequate supply of essential commodites at the controlled prices it is essential to open an adequate number of Government cheap grain shops. If Government is of the opinion that as apart of that programme it is necessary or expedient to requisition shop premises, than it is entitl to do so.

3. The fact that the shopkeeper whose shop has been requisit ed has been convicted, for example, of overcharging does not seem to affect much one way or the other Government's powers of requisitioning The fact that individual shopkeepers are overcharging is an indication that Government required to maintain supplies. And, of course, it ac with everyone's notion of justice that the shops requisitioned should those of offending shopkeepers. But Government may requisitionx any if it thinks it necessary or expedient to do so for any of the purpos of rule 75A, whether or notx a shopkeeper has committed an offence un the Defence of India Rules.

4. A(F)'s note seems to refer to the requisitioning of only shopkeeper premises. But on inquiry from the General Department it is understood that the requisitioning of stocks is also under consideration. Here against it is largely a question of fact for the Administrative Department to decide whether such requisitioning is necessary or expedient for any of the purposes of rule 75A. It would not necessarily follow that because it is necessary or expedient to requisition the shop premises it is also necessary to requisition the stock. The question of the stock would have to be considereed separately. Part of the stock may consist of non-essential commodities, for example, spices. It is difficult to see how it could be considered necessary or expedient to requisition such articles. Even as regards the essential commodites it would have to be considered whether there is justification for requisitioning them if there are already adquate supplies in the open market.

5. The Adviser's note mentions only requisitioning and not the further stage of acquisition. Rule 75A deals with two sets of events: the first that of requisitioning, the second that of acquisition. As regards the shop premises, requisitioning would probably give Government suffucient powers for it purposes. But if the stock is to be sold by Government, then it would be necessary also to acquire the stocks. Unless the stocks are vested in Government they could not be sold, and it is only by acquisition that the stocks would fest in Government.

Sd/-P.N.M.
22/7

Remembrancer of Legal Affairs.

U.R. to G.D. No.6000, dated the 3rd July 1942.

M.R.D.
2/5/56

Office of the R.L.A.

It is stated that the hawkers of kerosene who took their supplies from the Seuri Depot first to the Agents' shop and then to their own destination were mobbed on the way and were forced to sell the kerosene with the result that part of the City could not get its supplies. To tide over such recurrences, it is proposed that Government should make it an offence for any person to buy kerosene from these hawkers except at the appointed destination marked on the carts. The question for the R.L.A.'s consideration is whether an order can be made under the Defence of India Rules making it an offence to take kerosene except at the appointed place mentioned on the cart.

2. Under clause(a)of sub-rule(2)of rule 81of the Defence of India Rules, the Provincial Government, so far as appears to it to be necessary or expedient for maintaining supplies essential to the life of the community, may by order provide inter alia for regulating the distribution disposal and ~~acquisition~~ acquisition of articles or things of any description whatsoever. The word "acquire" in law of Contracts and Deeds, means to become the owner of property: to make property one's own(I.L.R. 36.Bom.446). "Acquisition" means the act by which a person acquires a property in a thing (vide O.21 of Iyer(s Law Lexicon). To regulate means to subject to Government principles: to adjust. Under rule 81(2)(a) Government has power to make an order regulating the acquisition of any article or thing of any description essential to the life of the community. Kerosene being essential to the life of the community, and the maintenance of its supply being necessary it would be competent for Government to issue order that no person should buy kerosen from any hawker except at the place mentioned on the cart. Such an order should be intra vires Rule 81- 81(2)(a) and a contravention of such order would be punishable under Rule 81(4)of the Defence of India Rules.

3. The Order should also make it penal for a kerosene hawker to sell kerosence at a place other than the place mentioned on the cart.

Sd/- P.N.H.
24/7

Remembrancer of Legal Affairs.

U.R. to S.D. No.6042,dated the 24th July 1942.

U.R.D.
2/5/56

Office of the Raha.

The Case in point would appear to come within the purview of clause 11(b) of the Bombay Rent Restriction Order, 1942 and the Controller would be competent to fix the standard rent at any figure he deems just even though that figure happen to be below Rs. 80.

Sd/- P.N.H.
27/7

Remembrancer of Legal Affairs.

N.R.D.
2/5/56

U.R. to G.P. No.6109 dated the 27th July 1942.